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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 8988 of May 31, 2013**

## Great Outdoors Month, 2013

**By the President of the United States of America**

**A Proclamation**

The United States is blessed with a wealth of natural diversity that remains at the heart of who we are as a people. From breathtaking seascapes to the limitless stretch of the Great Plains, our natural surroundings animate the American spirit, fuel discovery and innovation, and offer unparalleled opportunities for recreation and learning. During Great Outdoors Month, we celebrate the land entrusted to us by our forebears and resolve to pass it on safely to future generations.

We owe our heritage to the work of visionary citizens who believed that our obligations as Americans are not just to ourselves, but to all posterity. It is up to all of us to carry that legacy forward in the 21st century—which is why I was proud to launch the America's Great Outdoors Initiative to bring innovative strategies to today's conservation challenges. Alongside leaders in government and the private sector, we are taking action to expand outdoor opportunities in urban areas, promote outdoor recreation, protect our landscapes, and connect the next generation to our natural treasures. And by tapping into the wisdom of concerned citizens from every corner of our country, we are finding new solutions that respond to the priorities of the American people.

At a time when too many of our young people find themselves in sedentary routines, we need to do more to help all Americans reconnect with the outdoors. To lead the way, First Lady Michelle Obama's *Let's Move Outside!* initiative encourages families to get out and enjoy our beautiful country, whether at a National Park or just outside their doorstep. And through the 21st Century Conservation Service Corps, young men and women will get hands-on experience restoring our public lands and protecting our cultural heritage.

Fortunately, we do not have to choose between good environmental stewardship and economic progress because they go hand-in-hand. Smart, sustainable policies can create jobs, increase tourism, and lay the groundwork for long-term economic growth. For example, our National Travel and Tourism Strategy aims to bring more people to all of our national attractions, including our public lands and waters, and the five new National Monuments I was proud to designate earlier this year. Our natural spaces are also laboratories for scientists, inventors, and creators—Americans who sustain a tradition of innovation that makes our country the most dynamic economy on earth.

For centuries, America's great outdoors have given definition to our national character and inspired us toward bold new horizons. This month, let us reflect on those timeless gifts, and let us vow to renew them in the years to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2013 as Great Outdoors Month. I urge all Americans to explore the great outdoors and to uphold our Nation's legacy of conserving our lands and waters for future generations.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–13540
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# Presidential Documents

**Proclamation 8989 of May 31, 2013**

## Lesbian, Gay, Bisexual, and Transgender Pride Month, 2013

**By the President of the United States of America**

**A Proclamation**

For more than two centuries, our Nation has struggled to transform the ideals of liberty and equality from founding promise into lasting reality. Lesbian, gay, bisexual, and transgender (LGBT) Americans and their allies have been hard at work on the next great chapter of that history—from the patrons of The Stonewall Inn who sparked a movement to service members who can finally be honest about who they love to brave young people who come out and speak out every day.

This year, we celebrate LGBT Pride Month at a moment of great hope and progress, recognizing that more needs to be done. Support for LGBT equality is growing, led by a generation which understands that, in the words of Dr. Martin Luther King, Jr., ''injustice anywhere is a threat to justice everywhere.'' In the past year, for the first time, voters in multiple States affirmed marriage equality for same-sex couples. State and local governments have taken important steps to provide much-needed protections for transgender Americans.

My Administration is a proud partner in the journey toward LGBT equality. We extended hate crimes protections to include attacks based on sexual orientation or gender identity and repealed ''Don't Ask, Don't Tell.'' We lifted the HIV entry ban and ensured hospital visitation rights for LGBT patients. Together, we have investigated and addressed pervasive bullying faced by LGBT students, prohibited discrimination based on sexual orientation and gender identity in Federal housing, and extended benefits for same-sex domestic partners. Earlier this year, I signed a reauthorization of the Violence Against Women Act (VAWA) that prohibits discrimination on the basis of sexual orientation or gender identity in the implementation of any VAWA-funded program. And because LGBT rights are human rights, my Administration is implementing the first-ever Federal strategy to advance equality for LGBT people around the world.

We have witnessed real and lasting change, but our work is not complete. I continue to support a fully inclusive Employment Non-Discrimination Act, as well as the Respect for Marriage Act. My Administration continues to implement the Affordable Care Act, which beginning in 2014, prohibits insurers from denying coverage to consumers based on their sexual orientation or gender identity, as well as the National HIV/AIDS Strategy, which addresses the disparate impact of the HIV epidemic among certain LGBT sub-communities. We have a long way to go, but if we continue on this path together, I am confident that one day soon, from coast to coast, all of our young people will look to the future with the same sense of promise and possibility. I am confident because I have seen the talent, passion, and commitment of LGBT advocates and their allies, and I know that when voices are joined in common purpose, they cannot be stopped.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2013 as Lesbian, Gay, Bisexual, and Transgender Pride Month. I call upon the people of

the United States to eliminate prejudice everywhere it exists, and to celebrate the great diversity of the American people.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

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# Presidential Documents

**Proclamation 8990 of May 31, 2013**

## National Caribbean-American Heritage Month, 2013

**By the President of the United States of America**

**A Proclamation**

For centuries, the United States and nations in the Caribbean have grown alongside each other as partners in progress. Separated by sea but united by a yearning for independence, our countries won the right to chart their own destinies after generations of colonial rule. Time and again, we have led the way to a brighter future together—from lifting the stains of slavery and segregation to widening the circle of opportunity for our sons and daughters.

National Caribbean-American Heritage Month is a time to celebrate those enduring achievements. It is also a chance to recognize men and women who trace their roots to the Caribbean. Through every chapter of our Nation's history, Caribbean Americans have made our country stronger—reshaping our politics and reigniting the arts, spurring our movements and answering the call to serve. Caribbean traditions have enriched our own, and woven new threads into our cultural fabric. Again and again, Caribbean immigrants and their descendants have reaffirmed America's promise as a land of opportunity—a place where no matter who you are or where you come from, you can make it if you try.

Together, as a Nation of immigrants, we will keep writing that story. And alongside our partners throughout the Caribbean, we will keep working to achieve inclusive economic growth, access to clean and affordable energy, enhanced security, and lasting opportunity for all our people. As we honor Caribbean Americans this month, let us strengthen the ties that bind us as members of the Pan American community, and let us resolve to carry them forward in the years ahead.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2013 as National Caribbean-American Heritage Month. I encourage all Americans to celebrate the history and culture of Caribbean Americans with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–13544
Filed 6–5–13; 8:45 am]
Billing code 3295–F3

# Presidential Documents

**Proclamation 8991 of May 31, 2013**

## National Oceans Month, 2013

**By the President of the United States of America**

**A Proclamation**

From providing food and energy to helping sustain our climate and our security, the oceans play a critical role in nearly every part of our national life. They connect us to countries around the world, and support transportation and trade networks that grow our economy. For millions of Americans, our coasts are also a gateway to good jobs and a decent living. All of us have a stake in keeping the oceans, coasts, and Great Lakes clean and productive—which is why we must manage them wisely not just in our time, but for generations to come.

Rising to meet that test means addressing threats like overfishing, pollution, and climate change. Alongside partners at every level of government and throughout the private sector, my Administration is taking up that task. Earlier this year, we finalized a plan to turn our National Ocean Policy into concrete actions that protect the environment, streamline Federal operations, and promote economic growth. The plan charts a path to better decision-making through science and data sharing, and it ensures tax dollars are spent more efficiently by reducing duplication and cutting red tape. Best of all, it puts stock in the American people—drawing on their knowledge and empowering communities to bring local solutions to the challenges we face.

By making smart choices in ocean management, we can give our businesses the tools they need to thrive while protecting the long-term health of our marine ecosystems. Let us mark this month by renewing those goals, reinvesting in our coastal economies, and recommitting to good stewardship in the years ahead.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2013 as National Oceans Month. I call upon Americans to take action to protect, conserve, and restore our oceans, coasts, and the Great Lakes.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–13547
Filed 6–5–13; 8:45 am]
Billing code 3295–F3

# Rules and Regulations

Federal Register
Vol. 78, No. 109
Thursday, June 6, 2013

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–1431; Airspace Docket No. 11–ACE–24]**

## Amendment of Class E Airspace; Atwood, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Atwood, KS. Decommissioning of the Atwood non-directional radio beacon (NDB) at Atwood—Rawlins County—City County Airport has made reconfiguration necessary for standard instrument approach procedures and for the safety and management of Instrument Flight Rule (IFR) operations at the airport. Geographic coordinates are also updated.

**DATES:** Effective date: 0901 UTC, August 22, 2013. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

### History

On February 15, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the Atwood, KS, area, creating additional controlled airspace at Atwood—Rawlins County—City County Airport (78 FR 11115) Docket No. FAA–2011–1431. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the airport for standard instrument approach procedures at Atwood—Rawlins County—City County Airport, Atwood, KS. The airspace extension north of the airport is removed due to the decommissioning of the Atwood NDB and the cancellation of the NDB approach. Geographic coordinates are also updated to coincide with the FAA's aeronautical database. Controlled airspace enhances the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Atwood—Rawlins County—City County Airport, Atwood, KS.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.*

* * * * *

**ACE KS E5 Atwood, KS [Amended]**

Atwood-Rawlins County-City County Airport, KS
(Lat. 39°50′25″ N., long. 101°02′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Atwood-Rawlins County-City County Airport.

Issued in Fort Worth, Texas, on May 22, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–13025 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2012–1099; Airspace Docket No. 12–ASW–9]**

## Amendment of Class E Airspace; La Pryor, Chaparrosa Ranch Airport, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at La Pryor, TX. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Chaparrosa Ranch Airport. The airport's geographic coordinates are also adjusted. This action enhances the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** Effective date: 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

### History

On February 15, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the La Pryor, TX, area, creating additional controlled airspace at Chaparrosa Ranch Airport (78 FR 11114) Docket No. FAA–2012–1099. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface to ensure that required controlled airspace exists from the 6.5-mile radius of the airport to 18 miles north of the airport to contain aircraft executing new standard instrument approach procedures at Chaparrosa Ranch Airport, La Pryor, TX. This action enhances the safety and management of IFR operations at the airport. Geographic coordinates of the airport are also updated to coincide with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Chaparrosa Ranch Airport, La Pryor, TX.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.*

* * * * *

**ASW TX E5 La Pryor Chaparrosa Ranch Airport, TX [Amended]**

Chaparrosa Ranch Airport, TX
(Lat. 28°52′45″ N., long. 99°59′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Chaparrosa Ranch Airport, and within 8 miles west and 4 miles east of the 339° bearing from the airport extending from the 6.5-mile radius to 18 miles north of the airport.

Issued in Fort Worth, Texas, on May 22, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–13024 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2012–1097; Airspace Docket No. 12–AGL–1]**

## Establishment of Class E Airspace; Linton, ND

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Linton, ND. Controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Linton Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** *Effective date:* 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

### History

On March 6, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace for the Linton, ND, area, creating controlled airspace at Linton Municipal Airport (78 FR 14478) Docket No. FAA–2012–1097. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 and 1,200 feet above the surface to ensure that required controlled airspace exists to contain new standard instrument approach procedures at Linton Municipal Airport, Linton, ND. Controlled airspace enhances the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Linton Municipal Airport, Linton, ND.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.*

* * * * *

**AGL ND E5 Linton, ND [New]**

Linton Municipal Airport, ND
(Lat. 46°13′14″ N., long. 100°14′44″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Linton Municipal Airport, and that airspace extending upward from 1,200 feet above the surface within a 64-mile radius of the airport.

Issued in Fort Worth, Texas, on May 22, 2013.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2013–13026 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2012–1051; Airspace Docket No. 12–ASO–39]**

## Establishment of Class E Airspace; Immokalee-Big Cypress Airfield, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction

**SUMMARY:** This action makes a correction to the title and airspace descriptor of a final rule published in the **Federal Register** of May 1, 2013. The title and airspace descriptor are corrected to read Immokalee-Big Cypress Airfield, FL.

**DATES:** Effective 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to

the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

**History**

**Federal Register** document FAA–2012–1051, Airspace Docket No. 12–ASO–39, published May 1, 2013, establishes Class E airspace at Big Cypress Airfield, Immokalee, FL (78 FR 25384). Subsequent to publication, the FAA found that existing controlled airspace already is charted for another airport at Immokalee, FL, with the same descriptor. Since there can only be one Immokalee, FL, the title and airspace descriptor for Big Cypress Airfield is changed from Immokalee, FL, to Immokalee-Big Cypress Airfield, FL. This is a technical change and does not affect the boundaries or operating requirements of the airspace. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The class E airspace designation listed in this document will be published subsequently in the Order.

**Correction to Final Rule**

Accordingly, pursuant to the authority delegated to me, on page 25384, column 1, line 7, the title as published in the **Federal Register** of May 1, 2013 (78 FR 25384) FR Doc. 2013–10214, is corrected to read ''. . . Immokalee-Big Cypress, FL''; and in column 3, line 26, the legal description is changed as follows:

**ASO FL E5 Immokalee-Big Cypress, FL [Corrected]**

Big Cypress Airfield, FL

(Lat. 26°19′34″ N., long. 80°59′17″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Big Cypress Airfield.

Issued in College Park, Georgia, on May 23, 2013.

**Jackson D. Allen,**

*Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization .*

[FR Doc. 2013–13027 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2012–1336; Airspace Docket No. 12–ASO–20]**

## Establishment of Class E Airspace; Pine Island, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E Airspace at Pine Island, FL, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) special Standard Instrument Approach Procedure (SIAP) serving Pine Island Heliport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. Also, geographic coordinates are corrected under their proper heading.

**DATES:** Effective 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

**History**

On March 6, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace at Pine Island, FL (78 FR 14477). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication the FAA found that the heliport coordinates were incorrectly listed as point in space coordinates; and point in space coordinates were inadvertently omitted. This action makes the correction. Except for editorial changes and the changes listed above, this rule is the same as published in the NPRM.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface at Pine Island, FL, providing the controlled airspace required to support the new Copter RNAV (GPS) special standard instrument approach procedures for Pine Island Heliport. Controlled airspace within a 6-mile radius of the point in space coordinates of the heliport is necessary for the safety and management of IFR operations at the heliport. Geographic coordinates for the heliport and point in space are corrected and separately listed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Pine Island Heliport, Pine Island, FL.

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA

Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment

**Lists of Subjects in 14 CFR Part 71:**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO FL E5 Pine Island, FL [New]**

Pine Island Heliport, FL
(Lat. 26°36′24″ N., long. 82°6′39″ W.)
Point in Space Coordinates
(Lat. 26°36′37″ N., long. 82°5′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space Coordinates (lat. 26°36′37″ N., long. 82°5′57″ W.) serving Pine Island Heliport.

Issued in College Park, Georgia, on May 28, 2013.

**Jackson D. Allen,**

*Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2013–13104 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2012–1335; Airspace Docket No. 12–ASO–19]**

## Establishment of Class E Airspace; Captiva, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E Airspace at Captiva, FL, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) special Standard Instrument Approach Procedure (SIAP) serving Upper Captiva Island Heliport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. Also, geographic coordinates are corrected under their proper heading.

**DATES:** Effective 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

**History**

On March 6, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace at Captiva, FL (78 FR 14474). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication the FAA found that the heliport coordinates were incorrectly listed as point in space coordinates; and point in space coordinates were inadvertently omitted. This action makes the correction. Except for editorial changes and the changes listed above, this rule is the same as published in the NPRM.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface at Captiva, FL, providing the controlled airspace required to support the new Copter RNAV (GPS) special standard instrument approach procedures for Upper Captiva Island Heliport. Controlled airspace within a 6-mile radius of the point in space coordinates of the heliport is necessary for the safety and management of IFR operations at the heliport. Geographic coordinates for the heliport and point in space are corrected and separately listed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Upper Captiva Island Heliport, Captiva, FL.

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA

Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO FL E5 Captiva, FL [New]**

Upper Captiva Island Heliport, FL
(Lat. 26°36′11″ N., long. 82°13′0″ W.)
Point in Space Coordinates
(Lat. 26°36′39″ N., long. 82°12′29″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space Coordinates (lat. 26°36′39″ N., long. 82°12′29″ W.) serving Upper Captiva Island Heliport.

Issued in College Park, Georgia, on: May 28, 2013.

**Jackson D. Allen,**

*Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2013–13105 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2012–1337; Airspace Docket No. 12–ASO–21]**

## Establishment of Class E Airspace; Boca Grande, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E Airspace at Boca Grande, FL, to accommodate a new Area Navigation (RNAV) Global Positioning System (GPS) special Standard Instrument Approach Procedure (SIAP) serving Boca Grande Heliport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. Also, geographic coordinates are corrected under their proper heading.

**DATES:** Effective 0901 UTC, August 22, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

**History**

On March 6, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace at Boca Grande, FL (78 FR 14479). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication the FAA found that the heliport coordinates were incorrectly listed as point in space coordinates; and point in space coordinates were inadvertently omitted. This action makes the correction. Except for editorial changes and the changes listed above, this rule is the same as published in the NPRM.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface at Boca Grande, FL, providing the controlled airspace required to support the new Copter RNAV (GPS) special standard instrument approach procedures for Boca Grande Heliport. Controlled airspace within a 6-mile radius of the point in space coordinates of the heliport is necessary for the safety and management of IFR operations at the heliport. Geographic coordinates for the heliport and point in space are corrected and separately listed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Boca Grande Heliport, Boca Grande, FL.

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA

Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

**Lists of Subjects in 14 CFR Part 71:**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO FL E5 Boca Grande, FL [New]**

Boca Grande Heliport, FL
(Lat. 26°44′33″ N., long. 82°15′32″ W.)
Point in Space Coordinates
(Lat. 26°44′22″ N., long. 82°14′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point in Space Coordinates (lat. 26°44′22″ N., long. 82°14′50″ W.) serving Boca Grande Heliport.

Issued in College Park, Georgia, on May 28, 2013.

**Jackson D. Allen,**

*Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2013–13106 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket Number USCG–2013–0250]**

**RIN 1625–AA08**

## Special Local Regulations; Daytona Beach Grand Prix of the Sea, Atlantic Ocean; Daytona Beach, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a special local regulation on the waters of the Atlantic Ocean east of Daytona Beach, Florida, during the Daytona Beach Grand Prix of the Sea, a series of high-speed boat races. The event is scheduled to take place on Friday through Sunday, June 14–16, 2013. Approximately 40 high-speed race boats are anticipated to participate in the races, and approximately 25 spectator vessels are expected to attend the event. This special local regulation is necessary to provide for the safety of life on navigable waters of the United States during the races. The special local regulation consists of the following two areas: a race area, where all persons and vessels, except those participating in the high-speed boat races, are prohibited from entering, transiting, anchoring, or remaining; and a buffer zone around the race area, where all persons and vessels, except those enforcing the buffer zone, are prohibited from entering, transiting, anchoring, or remaining unless authorized by the Captain of the Port Jacksonville or a designated representative.

**DATES:** This rule is effective from 9 a.m. on June 14, 2013, until 4 p.m. on June 16, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0250. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''Keyword'' box, and then click ''Search.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or email Lieutenant Commander Robert Butts, Sector Jacksonville Office of Waterways Management, Coast Guard; telephone (904) 564–7563, email *Robert.S.Butts@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

**A. Regulatory History and Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information regarding the event with sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to race boat participants, participant race craft, spectators, and the general public.

Under 5 U.S.C. 553(d)(3), for the reasons stated above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**B. Basis and Purpose**

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Daytona Beach Grand Prix of the Sea.

**C. Discussion of the Final Rule**

On Friday through Sunday, June 14–16, 2013, Powerboat P1–USA will host the Daytona Beach Grand Prix of the Sea, a series of high-speed boat races. The event will be held on the waters of the Atlantic Ocean east of Daytona Beach, Florida. Approximately 40 high-speed power boats are anticipated to participate in the races. It is anticipated

that at least 25 spectator vessels will be present during the event.

The special local regulation will encompass certain waters of the Atlantic Ocean east of Daytona Beach, Florida. The special local regulation will be enforced daily from 9 a.m. until 4 p.m., on June 14 to 16, 2013.

The special local regulation will consist of the following two areas: (1) A race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting, anchoring, or remaining; and (2) a buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, are prohibited from entering, transiting, anchoring, or remaining.

Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area or buffer zone by contacting the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area or buffer zone is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

**D. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only 21 hours over the course of three days; (2) although non-participant persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area or buffer zone without authorization from the Captain of the Port Jacksonville or a designated representative, they may operate in the surrounding area during the enforcement period; (3) non-participant persons and vessels may still enter, transit through, anchor in, or remain within the race area or buffer zone if authorized by the Captain of the Port Jacksonville or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the waters encompassed within the special local regulation during the daily enforcement period of 9 a.m. until 4 p.m. on June 14 to 16, 2013.

For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have a significant economic impact on a substantial number of small entities.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*8. Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

*9. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*10. Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

*11. Indian Tribal Governments*

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

*12. Energy Effects*

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) and 35(b) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233

■ 2. Add a temporary § 100.35T07–0250 to read as follows:

**§ 100.35T07–0250 Special Local Regulations; Daytona Beach Grand Prix of the Sea, Atlantic Ocean; Daytona Beach, FL.**

(a) *Regulated Areas.* The following regulated areas are established. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of the Atlantic Ocean located east of Daytona Beach encompassed within an imaginary line connecting the following points: starting at Point 1 in position 29°14′60″ N, 81°00′77″ W; thence east to Point 2 in position 29°14′78″ N, 80°59′80″ W; thence south to Point 3 in position 28°13′86″ N, 80°59′76″ W; thence west to Point 4 in position 29°13′68″ N, 81°00′28″ W; thence north back to origin.

(2) *Buffer Zone.* All waters of the Atlantic Ocean located east of Daytona Beach, excluding the race area, and encompassed within an imaginary line connecting the following points: starting at Point 1 in position 29°14′54″ N, 80°00′77″ W; thence east to Point 2 in position 29°14′72″ N, 81°00′23″ W; thence south to Point 3 in position 29°13′91″ N, 80°59′84″ W; thence west to Point 4 in position 29°13′70″ N, 81°00′34″ W; thence north back to origin.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within Race Area unless an authorized race participant.

(2) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within Buffer Zone except for those vessels enforcing the buffer zone or authorized race participants transiting to the race area.

(3) Vessels that are neither participating in the race nor enforcing the buffer zone are prohibited from entering the regulated areas unless authorized by the Captain of the Port Jacksonville or a designated representative.

(4) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Jacksonville by telephone at (904) 564–7513, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville or a designated representative.

(5) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced from 9 a.m. until 4 p.m. daily on June 14 to 16, 2013.

Dated: May 24, 2013.

**T.G. Allan, Jr.,**

*Captain, U. S. Coast Guard, Captain of the Port Jacksonville.*

[FR Doc. 2013–13423 Filed 6–5–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2012–0911]**

## Drawbridge Operation Regulation; City Waterway Also Known as Thea Foss Waterway, Tacoma, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the South 11th Street (''Murray Morgan'') Bridge across the City Waterway also known as the

Thea Foss Waterway, mile 0.6, at Tacoma, WA. The current test deviation will expire 8 a.m. June 15, 2013. This deviation is necessary to continue with the current operating schedule until the final rulemaking changes permanently go into effect.

**DATES:** This deviation is effective from 8 a.m. on June 15, 2013 to 8 a.m. June 30, 2013.

**ADDRESSES:** The docket for this deviation, [USCG–2012–0911] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Lieutenant Commander Steven Fischer, Bridge Specialist, Coast Guard Thirteenth District; telephone 206–220–7277, email *Steven.M.Fischer2@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** On November 20, 2012, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Thea Foss Waterway previously known as City Waterway, Tacoma, WA'' in the **Federal Register** (77 FR 69576). This NPRM proposed three changes to the operating schedule of the Murray Morgan Bridge, also known as the South 11th Street Bridge, across Thea Foss Waterway, previously known as City Waterway, mile 0.6, at Tacoma.

The first change requires that for bridge openings needed between 10 p.m. and 8 a.m., notification be made no later than 8 p.m. prior to the desired opening. This differs from the existing regulation in that presently the bridge is required to open at all times (except during authorized closure periods) provided two hours advance notice is given. Over an 18 month period there were only 6 bridge openings requested between 10 p.m. and 8 a.m. which averages one bridge opening request per three month period. One of the unique features of the Murray Morgan Bridge is its height above the waterway providing 60 feet of clearance at mean high water (MHW) in the closed position. Because of this vertical clearance the overwhelming majority of vessels which transit this waterway do not require a bridge opening. The majority of bridge openings are for locally moored and operated recreational sailboats with mast heights over 60 feet. Almost all of these vessels are moored at marinas in very close proximity of the bridge.

The second change is removing the authorized bridge closure periods in the morning and afternoon. The current regulation states that the draw need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday, for vessels of less than 1,000 gross tons. This change requires the draw to open at all times with proper advance notification. The morning and afternoon authorized closures of the bridge outlined in the existing regulation were put into place when the bridge was part of SR 509, a continuous route from Northeast Tacoma to downtown, and traffic volumes were approximately 15,000 vehicles per day. In 1997 a new SR 509 was constructed approximately 0.7 miles south of the bridge and is now used as the main traffic corridor. After completion of the new SR 509, the Murray Morgan Bridge connection between Northeast Tacoma and downtown was severed due to roadway reconfiguration, resulting in traffic volumes dropping dramatically; therefore, the bridge no longer conveys high volumes of traffic during the morning and afternoon rush hours.

The third change is principally administrative and changes the contact information for emergency bridge openings. The existing regulation states ''In emergencies, openings shall be made as soon as possible upon notification to the Washington State Department of Transportation.'' The change requires notification for emergency opening to be made to the City of Tacoma. The reason for this change is because Washington State turned over ownership and responsibility of the bridge to the City of Tacoma on January 6, 1998.

In conjunction with the NPRM published on November 20, 2012, the Coast Guard published a temporary deviation from regulations entitled, ''Drawbridge Operation Regulation; Thea Foss Waterway previously known as City Waterway, Tacoma, WA'' in the **Federal Register** (77 FR 69562) to test the operating schedule under the proposed regulations. Under this temporary deviation the bridge operates as follows: The draw of the Murray Morgan Bridge, also known as the South 11th Street Bridge, across Thea Foss Waterway, previously known as City Waterway, mile 0.6, at Tacoma, shall open on signal if at least two hours notice is given. However, to obtain a bridge opening between 10 p.m. and 8 a.m. notification must be made to the City of Tacoma by 8 p.m. In emergencies, openings shall be made as soon as possible upon notification to the City of Tacoma. The Murray Morgan Bridge is a vertical lift bridge which provides a vertical clearance of 60 feet above mean high water (MHW) while in the closed position and 135 feet of vertical clearance in the open position. Vessels which do not require a bridge opening may continue to transit beneath the bridge at any time.

This test deviation is set to expire at 8 a.m. June 15, 2013. However, the final rule which will make these changes to the operating schedule permanent will not be effective by the date in which the test deviation expires. Therefore, to maintain safe and efficient transit through the bridge, the Coast Guard has issued a temporary deviation from regulations to continue the current operating schedule as laid out above until June 30, 2013. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 23, 2013.

**Daryl R. Peloquin,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2013–13424 Filed 6–5–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0358]**

**RIN 1625–AA00**

## Safety Zone; RXR Sea Faire Celebration Fireworks, Glen Cove, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of Long Island

Sound in the vicinity of Glen Cove, NY for a fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays. This rule is intended to restrict all vessels from a portion of Long Island Sound before, during, and immediately after the fireworks event.

**DATES:** This rule is effective on July 6, 2013, from 8 p.m. until 11 p.m.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2013–0358]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Junior Grade Kristopher Kesting, Sector New York, Waterways Management, U.S. Coast Guard; Telephone (718) 354–4154, Email *Kristopher.R.Kesting@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

**A. Regulatory History and Information**

The Coast Guard is issuing this rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the necessary information from the event sponsor in time to issue a notice of proposed rulemaking. The event sponsor advised that the event is in correlation with a local Sea faire festival, therefore the sponsor is unable and unwilling to cancel or delay the event date.

Under 5 U.S.C. 553(d)(3), for the same reasons mentioned above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The rule must become effective on the date specified in order to provide for the safety of spectators and vessels operating in the area near this event. Delaying the effective date of this rule would be impracticable and contrary to the public interest and would expose spectators and vessels to the hazards associated with the fireworks event.

**B. Basis and Purpose**

The legal basis for this rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

This temporary safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display. The fireworks are taking place as part of the RXR Sea Faire Celebration Fireworks in Glen Cove, NY. Based on the inherent hazards associated with fireworks, the COTP New York has determined that fireworks launches in close proximity to water crafts pose a significant risk to public safety and property. The combination of an increased number of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, and debris especially burning debris falling on passing or spectator vessels has the potential to result in serious injuries or fatalities.

**C. Discussion of the Final Rule**

This rule establishes a temporary safety zone on the navigable waters of Long Island Sound, in the vicinity of Glen Cove, NY. All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) New York or the designated representative during the enforcement of the temporary safety zone. Entering into, transiting through, or anchoring within the temporary safety zone is prohibited unless authorized by the COTP, or the designated representative.

This temporary safety zone will restrict vessels from a portion of Long Island Sound around the location of the fireworks launch platform before, during, and immediately after the fireworks display.

The Coast Guard has determined that this regulated area will not have a significant impact on vessel traffic due to its temporary nature and limited size and the fact that vessels are allowed to transit the navigable waters outside of the regulated area.

Advanced public notifications may also be made to the local mariners through appropriate means, which may include, but are not limited to, the Local Notice to Mariners as well as Broadcast Notice to Mariners.

**D. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard's implementation of this temporary safety zone will be of short duration and is designed to minimize the impact to vessel traffic on the navigable waters. This temporary safety zone will only be enforced for a short period, in the late evening. Vessels will be able to transit around the zone in a safe manner.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the navigable waters in the vicinity of the marine event during the effective period.

(2) This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be

in effect a short period; late at night when vessel traffic is low, vessel traffic could pass safely around the safety zone, and the Coast Guard will notify mariners before activating the zone by appropriate means which may include but are not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

*6. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

*7. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*8. Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*9. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*10. Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

*11. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*12. Energy Effects*

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

*13. Technical Standards*

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0358 to read as follows:

**§ 165.T01–0358 Safety Zone; RXR Sea Faire Celebration Fireworks, Glen Cove**

(a) *Regulated Area.* The following area is a temporary safety zone: All navigable waters of Long Island Sound within a 200-yard radius of the fireworks barge located in approximate position 40°51′10″ N, 073°39′15″ W, in the vicinity of Glen Cove, NY.

(b) *Effective Dates and Enforcement Periods.* This rule is effective and will be enforced on July 6, 2013, from 8 p.m. until 11 p.m.

(c) *Definitions.* The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official

patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No spectators will be allowed to enter into, transit through, or anchor in the safety zone without the permission of the COTP or the designated representative.

(3) All spectators given permission to enter or operate in the regulated area shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, vessel spectator shall proceed as directed.

(4) Spectators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

Dated: May 17, 2013.

**G. Loebl,**

*Captain, U.S. Coast Guard, Captain of the Port New York.*

[FR Doc. 2013–13422 Filed 6–5–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2013–0419]**

**RIN 1625–AA00**

## Safety Zone; Flagship Niagara Mariners Ball Fireworks, Presque Isle Bay, Erie, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Presque Isle Bay, Erie, PA. This safety zone is intended to restrict vessels from a portion of Presque Isle Bay during the Flagship Niagara Mariners Ball Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

**DATES:** This rule will be effective from 9:30 p.m. until 11 p.m. on June 8, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2013–0419]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run is impracticable because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

### B. Basis and Purpose

Between 10 p.m. and 10:30 p.m. on June 8, 2013, a fireworks display will be held on Presque Isle Bay near the Cruise Terminal Pier in Erie, PA. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

### C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Flagship Niagara Mariners Ball Fireworks. This zone will be effective and enforced from 9:30 p.m. until 11 p.m. on June 8, 2013. This zone will encompass all waters of Presque Isle Bay, Erie, PA within a 420 foot radius of position 42°08′21.5″ N and 80°05′16.7″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order

13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Presque Isle Bay on the evening of June 8, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only 90 minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*4. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

*6. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*7. Taking of Private Property*

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*8. Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*9. Protection of Children*

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

*10. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*11. Energy Effects*

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

*12. Technical Standards*

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*13. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0419 to read as follows:

### § 165.T09–0419 Safety Zone; Flagship Niagara Mariners Ball Fireworks, Presque Isle Bay, Erie, PA.

(a) *Location.* This zone will encompass all waters of Presque Isle Bay, Erie, PA within a 420 foot radius of position 42°08′21.5″ N and 80°05′16.7″ W (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on June 8, 2013, from 9:30 p.m. until 11 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: May 28, 2013.

**S.M. Wischmann,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 2013–13426 Filed 6–5–13; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2012–0955; FRL–9819–6]**

## Approval and Promulgation of Air Quality Implementation Plans; Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia; Removal of Obsolete Regulations and Updates to Citations to State Regulations Due to Recodification

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to remove over fifty rules in the Code of Federal Regulations (CFR) at 40 CFR part 52 for Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia because they are unnecessary or obsolete. EPA is also taking direct final action to clarify regulations in 40 CFR part 52 to reflect updated citations of certain Virginia rules due to the Commonwealth's recodification of its regulations at the state level. These direct final actions make no substantive changes to these State Implementation Plans (SIPs) and impose no new requirements. In the proposed rules section of this **Federal Register**, EPA is also proposing to remove and clarify these regulations and is soliciting public comment. If adverse comments are received on the direct final rule, EPA will withdraw the portions of the final rule that triggered the comments. Any portions of the final rule for which no adverse or critical comment is received will become final after the designated period.

**DATES:** This rule is effective on August 5, 2013 without further notice, unless EPA receives adverse written comment by July 8, 2013. If EPA receives such comments, it will publish a timely withdrawal of that portion of the direct final rule in the **Federal Register** which is adversely commented upon, and inform the public that that portion of the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0955 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: frankford.harold@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0955, Harold A. Frankford, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2012–0955. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814–2108, or by email at *frankford.harold@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

This action pertains to six subparts in 40 CFR part 52 for six states. Those six states are Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. EPA is removing rules from these states' subparts of 40 CFR part 52 because they pertain to state regulations that are outdated or legally obsolete in whole or in part. This action is being taken pursuant to Executive Order 13563—*Improving Regulation and Regulatory Review.* One aspect of this action involves an effort to reduce the number of pages in the CFR by identifying those rules in 40 CFR part 52 that are duplicative, outdated or obsolete. This action removes several rules from 40 CFR part 52 that no longer have any use or legal effect because they have been superseded by subsequently approved SIP revisions. This action also amends certain rules by revising incorrect or outdated state regulatory citations and state agencies' office addresses.

One aspect of EPA's action, affecting all six states, removes historical information found in the ''Original Identification of plan'' sections in 40 CFR part 52. These paragraphs are no longer necessary because EPA has promulgated administrative rule actions to replace these paragraphs with summary tables. These summary tables describe the regulations, source-specific actions, and non-regulatory requirements which comprise the SIPs for the six states. Another aspect of EPA's action, affecting Delaware, the District of Columbia, Maryland, Pennsylvania, and Virginia, removes rules pertaining to regulations that cross-reference the California Low Emission Vehicle (LEV) program in 40 CFR 51.120. These regulations have been replaced with EPA approvals of SIP revisions implementing a National Low Emission Vehicle (NLEV) program. Both of these actions are described in greater detail later in this document.

## II. Removal of Obsolete or Unnecessary Rules and Clarifications to Certain Rules

The following regulations include rules applicable on a state-specific basis. EPA has reviewed these rules and found that they should be removed or clarified for the reasons set forth as follows:

### *A. Delaware*

Section 52.422 Approval status.

In paragraph 52.422(a), the second sentence describes EPA's approval of Delaware's ozone SIP under the requirements of the 1977 Clean Air Act (CAA). This sentence is being removed because EPA has subsequently approved Delaware SIP revisions for the 1-hour and 8-hour national ambient air quality standards (NAAQS) for ozone under the requirements of the 1990 CAA. See 40 CFR 52.420(c) and (e).

Paragraph 52.422(b) refers to a commitment for Delaware to adopt a Federal clean fuel fleet program or alternative substitute. This paragraph is being removed because the Federal clean fuel fleet program is no longer a SIP requirement.

Section 52.432 Significant deterioration of air quality.

Paragraph 52.432(a) is obsolete because Delaware Regulation 1125 for its Prevention of Significant Deterioration (PSD) permitting program has been approved into the Delaware SIP at section 52.420(c). Paragraph 52.432(b) is partially redundant because the reference to 40 CFR 52.21(l)(2) is a duplication of the regulatory requirements of Delaware Regulation 1125, Section 3.10 which has been approved at section 52.420(c). The first sentence of paragraph 52.423(c) is obsolete because Delaware's PSD program is a SIP-approved program under 40 CFR part 51 and not a delegated program of the Federal PSD regulations found at 40 CFR 52.21. The last sentence of paragraph 52.423(c) is being revised to update the address of the office of the Delaware Department of Natural Resources and Environmental Control (DNREC). Therefore, paragraph 52.432(a) is being removed, while paragraphs 52.432(b) and (c) are being revised.

Section 52.465 Original identification of plan section.

Paragraphs 52.465(b) and (c) of this section, originally designated as 40 CFR 52.420(b) and (c), contains historical information only about EPA's approval actions for the Delaware SIP which occurred between May 31, 1972 and July 1, 1998. On December 7, 1998 (63 FR 67407), EPA reorganized the Identification of plan section (section 52.420) for subpart I by listing and summarizing Delaware's currently approved SIP requirements in paragraphs 52.420(a) through (e). Paragraphs 52.465(b) and (c) are being removed because EPA has determined that it is no longer necessary to codify the information found in these paragraphs. Paragraph 52.465(a) is being amended to state that this historical information will continue to be made available in the CFR annual editions, Title 40 part 52 (years 1999 through 2012). These annual editions are available on line at the following url address: *http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR*.

### *B. District of Columbia*

Section 52.472 Approval status.

Section 52.472(b) refers to transportation control measures (TCMs) which EPA had promulgated as part of the District's 1973 SIP revisions for photochemical oxidants and carbon monoxide. This paragraph is being removed because it is obsolete. The 1990 CAA revised TCM requirements. The TCMs that currently are part of the SIP were approved by EPA on September 20, 2011 (76 FR 58116). See 40 CFR 52.470(e). Section 52.472(f) was added as part of EPA's disapproval of the District's nonattainment New Source Review (NSR) program on March 24, 1995 (60 FR 15483). This paragraph is being removed because it is obsolete. The District has a fully approved Nonattainment NSR program (July 31, 1997, 62 FR 40937, as amended on April 16, 2004, 69 FR 77647).

Section 52.473 Conditional approval.

On April 17, 2003, (68 FR 19106), EPA conditionally approved the District's ozone nonattainment area SIP for the Metropolitan Washington, DC area. This section is being removed because on April 15, 2004 (69 FR 19937), 40 CFR 52.473 was stayed indefinitely and is no longer necessary to be codified in this subpart.

Section 52.479 Source surveillance.

On December 6, 1973 (38 FR 33701), EPA added paragraph 52.479(b) to state that the carpool locator measure of the District's TCM SIP was not approved. This paragraph is obsolete because this TCM is no longer a control strategy required by the 1990 CAA. The TCMs that currently are part of the SIP were approved by EPA on September 20, 2011 (76 FR 58116). Because paragraph 52.479(a) is already reserved, and there are no other paragraphs in Section 52.479, the entire section is being removed.

Section 52.515 Original identification of plan section.

Paragraphs 52.515(b) and (c) of this section, originally designated as 40 CFR 52.470(b) and (c), contains historical information only about EPA's approval actions for the District of Columbia SIP which occurred between May 31, 1972 and July 1, 1998. On December 7, 1998 (63 FR 67407), EPA reorganized the Identification of plan section (section 52.470) for subpart J by listing and summarizing the District's currently approved SIP requirements in

paragraphs 52.470(a) through (e). Paragraphs 52.515 (b) and (c) are being removed because EPA has determined that it is no longer necessary to codify the information found in these paragraphs. Paragraph 52.515(a) is being amended to state that this historical information will continue to be made available in the CFR annual editions, Title 40 part 52 (years 1999 through 2012). These annual editions are available on line at the following url address: *http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR*.

*C. Maryland*

Section 52.1072 Conditional approval.

On April 17, 2003, (68 FR 19106), EPA conditionally approved Maryland's ozone nonattainment area SIP for the Metropolitan Washington DC area. This section is being removed because on April 15, 2004 (69 FR 19937), 40 CFR 52.1072 was stayed indefinitely and is no longer necessary to be codified in this subpart.

Section 52.1073 Approval status.

On August 12, 1980 (45 FR 53460), paragraph 52.1073(b) was added to describe EPA's approval, with certain exceptions, of Maryland's January 19, 1979 plan for attaining and maintaining the NAAQS under Section 110 and for meeting the requirements of part D, Title 1, of the 1977 CAA. This paragraph also stated, ''continued satisfaction of the requirements of part D for the ozone portion of the SIP depends on the adoption and submittal of reasonably available control technology (RACT) requirements by July 1, 1980 for the sources covered by control technique guidelines (CTGs) issued between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.'' This paragraph is obsolete. It is being removed because all RACT and CTG requirements under the 1977 CAA have been met and the current ozone plan is subject to the requirements of the 1990 CAA. See 40 CFR 52.1070(c).

Paragraph 52.1073(c) describes EPA's approval of Code of Maryland Air Regulations (COMAR) 26.11.13.06. This paragraph is obsolete and is being removed. EPA had added this paragraph as part of a final rulemaking action published on May 24, 1991 (56 FR 23804) at 40 CFR 52.1070(c)(88). Maryland repealed Regulation 26.11.13.06, effective October 26, 1992. On November 13, 1992, Maryland submitted a SIP revision to EPA requesting the removal of Regulation 26.11.13.06. EPA approved that SIP revision on June 10, 1994 (59 FR 29957).

Paragraph 52.1073(d) refers to a commitment for Maryland to adopt a Federal clean fuel fleet program or alternative substitute. This paragraph is being removed. This paragraph is obsolete because the Federal clean fuel fleet program is no longer a SIP requirement.

Section 52.1074 Legal authority.

This section was added to state that Maryland lacked the necessary legal authority to prohibit the disclosure of emission data to the public. EPA has deemed this section to be obsolete and it is being removed. This section should have been removed when EPA approved a revision to COMAR 26.11.01.05 on May 28, 2002 (67 FR 36810).

Section 52.1077 Source surveillance.

This section was added to state that the Maryland SIP did not provide specific procedures for stationary sources to be periodically tested. This section is obsolete and is being removed. This section should have been removed as a result of EPA's approval of a revision to COMAR 26.11.01.05 on May 28, 2002 (67 FR 36810).

Section 52.1078 Extensions.

In this section, EPA extended the deadline by which Maryland must incorporate mandatory testing of second generation On-board Diagnostics (OBD–II) equipped motor vehicles as part of its inspection and maintenance (I/M) program until July 1, 2002. This section is obsolete and is being removed because Maryland is now implementing the OBD II program as part of its SIP-approved I/M program.

Section 52.1100 Original identification of plan section.

Paragraphs 52.1100(b) and (c) of this section, originally designated as 40 CFR 52.1070(b) and (c), contains historical information only about EPA's approval actions for the Maryland SIP which occurred between May 31, 1972 and November 31, 2004. On November 29, 2004 (69 FR 69304), EPA reorganized the Identification of plan section (section 52.1070) for subpart V by listing and summarizing Maryland's currently approved SIP requirements in paragraphs 52.1070(a) through (e). Paragraphs 52.1100(b) and (c) are being removed because EPA has determined that it is no longer necessary to codify the information found in these paragraphs. Paragraph 52.1100(a) is being amended to state that this historical information will continue to be made available in the CFR annual editions, Title 40 part 52 (years 2005 through 2012). These annual editions are available on line at the following url address: *http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR*.

Section 52.1118 Approval of bubbles in nonattainment areas lacking approved demonstrations: State assurances.

This section was added in order to secure approval of a bubble (or plantwide) control strategy for the American Cyanamid facility in Havre de Grace, Maryland. This section is obsolete and is being removed because the bubble for the American Cyanamid Facility was removed from the Maryland SIP, effective November 24, 2006 (October 24, 2006, 71 FR 62210).

*D. Pennsylvania*

Section 52.2022 Extensions.

Between May 31, 1972 and February 26, 1985, EPA granted Pennsylvania a series of extensions to attain and maintain the NAAQS for $SO_2$, particulate matter (PM), photochemical oxidants, carbon monoxide, and ozone. This entire section is obsolete and is being removed. The latest of these extended dates was December 31, 1987. All of these attainment dates have been superseded by the 1990 CAA and by revised attainment dates for ozone, PM, and $SO_2$ in response to the issuance of revised NAAQS.

Section 52.2023 Approval status.

Paragraph 52.2023(b) describes EPA's approval of Pennsylvania's plan for the attainment and maintenance of the NAAQS and states that the plan satisfies all requirements of part D, Title 1, of the 1977 CAA, with certain exceptions. Pennsylvania subsequently remedied all of the deficiencies which had been codified in paragraphs 52.2033(c) through (k). See 40 CFR 52.2020(c)(1) and (e)(1). Therefore, EPA is revising paragraph 52.2033(b) to remove the words ''except as noted below.''

Paragraph 52.2023(d) describes EPA's limited approval and limited disapproval action on Pennsylvania's Stage II vapor recovery regulation. This paragraph is obsolete and is being removed because EPA fully approved Pennsylvania's Stage II regulations in subsequent final actions published on December 13, 1995 (60 FR 63937, 63940).

Paragraph 52.2023(e) describes EPA's April 30, 1998 disapproval (63 FR 23668) of Pennsylvania's April 19, 1995 RACT determination for nitrogen oxides

($NO_X$) at the Pennsylvania Power Company's New Castle plant located in Lawrence County, Pennsylvania (Source No. 37–023). This paragraph is obsolete and is being removed. On June 26, 2002 (67 FR 43002), EPA approved Pennsylvania's amended $NO_X$ RACT determination for this source. See 40 CFR 52.2020(d)(1).

Paragraph 52.2023(j) describes a disapproval action taken by EPA with regard to Pennsylvania's enhanced I/M program. This paragraph is obsolete and is being removed. EPA approved Pennsylvania's enhanced I/M program on June 17, 1999 (64 FR 32411). EPA subsequently approved revisions to Pennsylvania's enhanced I/M program on October 6, 2005 (70 FR 58313). Pennsylvania is implementing a fully approved enhanced I/M program.

Section 52.2024 General requirements.

Section 52.2024(a) describes EPA's determination that Pennsylvania had inadequate legal authority to provide for the public availability of emissions data as required by section 110(a)(2)(F) of the CAA and 40 CFR 51.116. In section 52.2024, EPA promulgated a series of measures designed to ensure public access to emissions data. This entire section is obsolete and is being removed. It should have been removed on January 12, 1995 (60 FR 2881) when EPA approved Pennsylvania Regulation 135.21 pertaining to emissions statements.

Section 52.2025 Legal authority.

This section describes a SIP deficiency in Philadelphia's Home Rule Charter provision regarding the public right to inspection. On November 28, 1975 (40 FR 55326, 55333), EPA determined that this provision could, in some circumstances, prohibit the disclosure of emission data to the public. However, this section is now obsolete and is being removed. EPA approved Pennsylvania Regulation 135.21 and determined it would apply to the City of Philadelphia as well. See 40 CFR 52.2020(c)(1) and (e)(1).

Sections 52.2030 Source surveillance and 52.2032 Intergovernmental cooperation.

Sections 52.2030 and 52.2032 describe inadequacies which EPA identified regarding the implementation of Pennsylvania's TCMs required under the 1977 CAA. These sections are obsolete and are being removed. EPA has since determined that Pennsylvania has met all of its TCM requirements prescribed by the 1977 and 1990 CAA.

Section 52.2033 Control strategy: Sulfur oxides.

Paragraph 52.2033(a) describes EPA's approval action of the $SO_2$ control strategy for Allegheny County under the requirements of the 1970 CAA. This paragraph is obsolete and is being removed. It has been superseded by EPA's approval of the $SO_2$ attainment plan for Allegheny County under the requirements of the 1990 CAA at paragraph 52.2033(c).

Section 52.2034 Attainment dates for national standards.

This section states that Pennsylvania had not submitted a plan for Northumberland County, Snyder County, and Allegheny County, as of December 31, 1979, providing for the attainment and maintenance of the secondary NAAQS for $SO_2$. This section is obsolete and is being removed. On November 12, 1985 (50 FR 46649), EPA determined that the $SO_2$ nonattainment designations for both the primary and secondary NAAQS in both Northumberland and Snyder Counties were based on a modeling error, and that all other criteria for redesignating nonattainment areas to attainment had been met. Therefore, EPA redesignated both counties to attainment. On July 21, 2004 (69 FR 43522), EPA approved the modeled attainment demonstration and maintenance plan to attain and maintain the primary and secondary $SO_2$ NAAQS in the Hazelwood and Monongahela River Valley areas of Allegheny County.

Section 52.2037 Control strategy plans for attainment and rate-of-progress: Ozone.

Paragraph 52.2037(a) describes EPA's conditional approval of Pennsylvania's 1979 carbon monoxide and ozone plans. The conditional approval was based upon Pennsylvania's commitment to implement a commuter rail project or a substitute TCM which would produce equivalent emission reductions. This paragraph is obsolete and is being removed. EPA has since determined that Pennsylvania has met all of its TCM requirements prescribed by the 1990 CAA.

Section 52.2055 Review of new sources and modifications.

Section 52.2055 is obsolete and is being removed. It was created to highlight disapproved portions of the PSD and nonattainment NSR programs. Pennsylvania has a fully approved PSD program and nonattainment NSR program in accordance with current CAA and 40 CFR part 51 requirements.

Section 52.2058 Prevention of significant air quality deterioration.

Paragraph 52.2058(a) is being retained as the SIP status described in this paragraph is still current. However, the address for the office of the Pennsylvania Department of Environmental Protection found in this paragraph is obsolete and is being updated.

Section 52.2059 Control strategy: Particulate matter.

Paragraph 52.2059(a) was added to the CFR on May 20, 1980 (45 FR 33628). It describes a commitment by Pennsylvania to undertake a comprehensive program to investigate non-traditional sources, industrial process fugitive PM emissions, alternative control measures, and to develop and implement an effective control program to attain the primary and secondary NAAQS for total suspended particulates (TSP). This paragraph is obsolete and is being removed. On July 1, 1987 (52 FR 24634), EPA revoked the NAAQS for TSP and promulgated a new NAAQS for PM with a diameter of ten microns or less ($PM_{10}$) in its place. Effective October 14, 2003 (68 FR 53515, September 11, 2003), the entire Commonwealth of Pennsylvania was designated either attainment or unclassified for the $PM_{10}$ NAAQS. See 40 CFR 81.339.

Section 52.2063 Original identification of plan section.

Paragraphs 52.2063(b) and (c) of this section, originally designated as 40 CFR 52.2020(b) and (c), contains historical information only about EPA's approval actions for the Pennsylvania SIP, including Allegheny County and the City of Philadelphia, which occurred between May 31, 1972 and February 10, 2005. On February 25, 2005 (70 FR 9450), EPA reorganized the Identification of plan section (section 52.2020) for subpart NN by listing and summarizing Pennsylvania's (including Allegheny and Philadelphia Counties) currently approved SIP requirements in paragraphs 52.2020(a) through (e). Paragraphs 52.2063(b) and (c) are being removed because EPA has determined that it is no longer necessary to codify the information found in these paragraphs. Paragraph 52.2063(a) is being amended to state that this historical information will continue to be made available in the CFR annual editions, Title 40 part 52 (years 2005 through 2012). These annual editions are available on line at the following url address: *http://www.gpo.gov/fdsys/*

*browse/collection Cfr.action?collectionCode=CFR.*

*E. Virginia*

Section 52.2423 Approval status.

The second, third, and fourth sentences of paragraph 52.2423(a) state that Virginia's open burning regulations have been submitted for information purposes only and are not to be considered as a control strategy. These sentences are obsolete and are being removed. Open burning has been a control strategy in the Virginia SIP since March 12, 1997 (62 FR 11332). See 40 CFR 52.2420(c).

Paragraph 52.2423(d) states that a January 11, 1979 SIP submittal pertaining to Smyth County is not approved, pending a possible redesignation of the area to attainment status. The 1-hour ozone nonattainment area in Smyth County consisted of the portion of White Top Mountain above the 4,500 foot elevation. This paragraph is obsolete and is being removed. On April 30, 2004 (69 FR 23858, 23942), all of Smyth County was designated attainment of the 8-hour ozone NAAQS. On August 3, 2005 (70 FR 44470, 44478), the 1-hour ozone NAAQS was revoked for the White Top Mountain area, effective June 15, 2005. On April 29, 2008 (73 FR 23103), EPA approved the 8-hour ozone maintenance plan for Smyth County. See 40 CFR 52.2420(e).

Paragraph 52.5423(e) describes the disapproval of section 4.55(b) of the Virginia regulations because the regulation was not adequately enforceable. This paragraph is obsolete, and is being removed. Section 4.55(b) was never approved as part of the Virginia SIP, and no longer exists as a State regulation.

Paragraph 52.2423(f) describes a situation where a Virginia opacity regulation cited as section 9 VAC 5–40–20.A.3 is not considered part of the applicable plan because it contradicts a previously approved section of the SIP. EPA's assessment is still current. However, in this action EPA is revising this paragraph to add a reference to the current State citation of this opacity regulation (9VAC5–40–20.A.4).

Paragraph 52.2423(g) describes the exclusion of section 4.31(d)(3), a Virginia regulation pertaining to collection efficiency from the Virginia SIP. This paragraph is obsolete and is being removed because section 4.31(d)(3) of Virginia's regulation was never approved as a SIP requirement and no longer exists as a State regulation.

Paragraph 52.2423(j) refers to a commitment for Virginia to adopt a Federal clean fuel fleet program or alternative substitute. This paragraph is obsolete and is being removed because the Federal clean fuel fleet program is no longer a SIP requirement.

Paragraph 52.2423(k) describes EPA's disapproval of Virginia's November 12, 1992 redesignation request and maintenance plan for the Richmond moderate 1-hour ozone nonattainment area. EPA had disapproved this request and maintenance plan because of monitored ozone violations during the 1993 ozone season. This paragraph is now obsolete and is being removed. EPA subsequently approved the redesignation and 1-hour ozone maintenance plan for the Richmond area on November 17, 1997 (62 FR 61237). See 40 CFR 52.2420(e).

Paragraphs 52.2423(m) and (n) describe EPA's approval actions of Virginia regulations citing documents which Virginia has incorporated by reference. Virginia had submitted these actions in April 12, 1989 and February 12, 1993, respectively. Since that time, Virginia has recodified its regulations. While EPA's approval actions are still current, EPA is amending paragraphs (m) and (n) to add references to the current citations of these approved State regulations.

Sections 52.2427 Source surveillance and 52.2433 Intergovernmental cooperation.

Sections 52.2427 and 52.2433 describe inadequacies which EPA identified regarding the implementation of Virginia's TCMs required under the 1970 Clean Air Act. These sections are obsolete and are being removed. EPA has since determined that Virginia has met all of its TCM requirements prescribed by the 1990 CAA. The TCMs that currently are part of the SIP were approved by EPA on September 20, 2011 (76 FR 58116). Virginia also has a fully approved enhanced I/M program for the Northern Virginia Area—9VAC5, Chapter 91, as codified in 40 CFR 52.2420(c), last amended on April 22, 2008 (73 FR 21540).

Section 52.2436 Rules and regulations.

This section describes the disapproval of section 4.55(b) of a Virginia regulation because the regulation was not adequately enforceable. See 40 CFR 52.2423(e). This section is obsolete and is being removed because section 4.55(b) no longer exists in Virginia's regulations.

Section 52.2450 Conditional approval.

On August 30, 1995 (60 FR 45055), EPA conditionally approved a VOC RACT determination submitted by Virginia for the Philip Morris Manufacturing Center (No. 50076) located in Richmond, Virginia. This conditional approval is described in paragraph 52.2450(a). On October 14, 1997 (62 FR 53242), EPA fully approved Virginia's revised VOC RACT determination for this same facility at 52.2420(c)(120) which is now codified at 40 CFR 52.2420(d). Therefore, paragraph 52.2450(a) is obsolete and is being removed.

On April 17, 2003, (68 FR 19106), EPA conditionally approved and codified into paragraph 52.2450(b) Virginia's ozone nonattainment area SIP for the Metropolitan Washington DC area, which included the 1996–1999 portion of the rate-of-progress plan. However, on April 15, 2004 (69 FR 19937), 40 CFR 52.2450(b) was stayed indefinitely and is no longer necessary to be codified in this subpart. Therefore, paragraph 52.2450(b) is obsolete and is being removed. Because paragraphs 52.2450(c) through (f) are currently reserved, section 52.2450 is being removed in its entirety.

Section 52.2465 Original identification of plan section.

Paragraphs 52.2465(b) and (c) of this section, originally designated as 40 CFR 52.2420(b) and (c), contains historical information only about EPA's approval actions for the Virginia SIP which occurred between May 31, 1972 and March 1, 2000. On April 21, 2000 (65 FR 21315), EPA reorganized the Identification of plan section (section 52.2420) for subpart VV by listing and summarizing Virginia's currently approved SIP requirements in paragraphs 52.2420(a) through (e). Paragraphs 52.2465(b) and (c) are being removed because EPA has determined that it is no longer necessary to codify the information found in these paragraphs. Paragraph 52.2465(a) is being amended to state that this historical information will continue to be made available in the CFR annual editions, Title 40 part 52 (years 2000 through 2012). These annual editions are available on line at the following url address: *http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.*

*F. West Virginia*

Section 52.2522 Approval status.

In paragraph 52.2522(a), EPA states that deletion of the provisions found in section 3.03(b) of Regulation X, adopted in 1972 and amended in 1978, has been approved, except for an $SO_2$ emission limitation for the Rivesville Power Station. This paragraph is obsolete and

is being removed because section 3.3.b. of the current Regulation X (45CSR10) containing that $SO_2$ emission limitation for the Rivesville Power Station was approved by EPA on June 3, 2003 (68 FR 33002). See 40 CFR 52.2520(c).

In paragraph 52.2522(b), EPA states that the interim limitation of 5.12 lbs. of $SO_2$ per million BTU for the Harrison power plant is approved until a permanent emission limitation is approved. This paragraph is obsolete and is being removed because Section 3.3.a. of the current Regulation X (45CSR10) includes a permanent $SO_2$ emission limitation for the Harrison Power Plant which was approved as a SIP revision on June 3, 2003 (68 FR 33002). See 40 CFR 52.2520(c).

In paragraph 52.2522(c), EPA states that West Virginia's control strategy for attainment and maintenance of the secondary NAAQS for $SO_2$ is not approved as it applies to the Mitchell Power Station located in Marshall County, and the Harrison Power Station located in Harrison County. This paragraph is obsolete and is being removed. Since 1978, when the part 81 attainment designations were first established under section 107 of the CAA, both Marshall and Harrison Counties have been designated attainment for the secondary NAAQS for $SO_2$. EPA has also reviewed the ambient data of the secondary NAAQS for $SO_2$ recorded since January 1996 for these counties, and has found no violations in either county.

Paragraph 52.2522(h) describes a series of deficiencies to West Virginia minor new source permitting regulation (45CSR13) as submitted by West Virginia on August 26, 1994. This paragraph is obsolete and is being removed. On February 8, 2007 (72 FR 5932), EPA fully approved the provisions of West Virginia Regulation 45CSR13. See 40 CFR 52.2520(c). As a result, all of the deficiencies mentioned in paragraph 52.2522(h) have been corrected.

Section 52.2523 Attainment dates for national standards.

Section 52.2523 states that The New Manchester and Grant Magisterial Districts in Hancock County are expected to attain and maintain the secondary NAAQS for $SO_2$ as soon as the Sammis Power Plant, located in Jefferson County, Ohio, meets the $SO_2$ emission limitations in the Ohio Implementation Plan. This section is obsolete and is being removed. EPA has subsequently determined that the Sammis Plant is currently meeting the Ohio SIP's emissions limits. In addition, on June 8, 2005 (70 FR 33364), EPA redesignated the New Manchester-Grant Magisterial District in part 81 as ''Better than National Standards'' for the NAAQS for $SO_2$ and approved the maintenance plan, effective August 8, 2005. See 40 CFR 81.349.

Section 52.2524 Compliance schedules.

Sections 52.2524(a) and (b) were promulgated on June 20, 1973 (38 FR 16144, 16170) and August 23, 1973 (38 FR 22736), respectively. At this time there were issues as to whether plants could comply with SIP approved emission standards for $SO_2$ because of a lack of available low-sulfur coal and the availability of air pollution control equipment. These regulations set forth compliance schedules by which boilers or furnaces of more than 250 million Btu per hour heat input subject to the emission limitation requirements in West Virginia Regulation X must come into compliance with the applicable emission limitations for $SO_2$. This section is obsolete. The dates listed in this compliance schedule have long since passed, and the SIP regulatory citation for West Virginia's $SO_2$ control regulation has changed from Regulation X to Regulation 45CSR10. In addition, the emission limitations of Sections 3.01 and 3.03 (currently Section 45–10–3) have been revised. See November 9, 1978, 43 FR 52239 and June 3, 2003, 68 FR 33002. EPA, West Virginia, and several power companies have also entered into Federal consent decrees that specify control strategies, including flue gas desulfurization (FGD) and source shutdowns, which would assist compliance with the requirements of Regulation 45CSR10. An October 3, 2003 Federal Consent Decree between EPA and the Virginia Electric and Power Company (VEPCO) establishes compliance schedules for Units 1, 2, and 3 of the Mount Storm Power Station, and a December 7, 2007 Federal consent decree between EPA and the American Electric Power Service Corporation (AEP) establish compliance schedules for installing FGD at the Amos, Kanawha River, Kammer, Mitchell, Mountaineer, and Sporn Power Stations. Given that the compliance dates and regulation citations in section 52.2524 have been updated either in the SIP or by the 2003 and 2007 Federal consent decrees, section 52.2524 is being removed.

Section 52.2525 Control strategy: Sulfur dioxide.

Paragraph 52.2525(a) is obsolete and is being removed. As explained previously in this action, the $SO_2$ emission limit for the Rivesville Power Station, established in 1972, has since been approved by EPA on June 3, 2003 (68 FR 33002). See 40 CFR 52.2520(c). Since 1978, when the part 81 attainment designations were first established under section 107 of the CAA, the area in which this power plant is located (Marion County) has been designated attainment for the primary and secondary NAAQS for $SO_2$. EPA has also reviewed the ambient data of the secondary $SO_2$ NAAQS and has found that no violations have been recorded since January 1996.

Section 52.2528 Significant deterioration of air quality.

Paragraph 52.2528(b) describes portions of the Federal PSD regulation (40CFR 52.21) which are incorporated and made a part of the West Virginia SIP. This paragraph is redundant and is being removed because these measures duplicate the regulatory requirements of West Virginia Regulation 45CSR14, which is incorporated by reference at Section 52.2520(c).

Section 52.2565 Original identification of plan.

Paragraphs 52.2565(b) and (c) of this section, originally designated as 40 CFR 52.2520(b) and (c), contains historical information only about EPA's approval actions for the West Virginia SIP which occurred between May 31, 1972 and December 1, 2004. On February 10, 2005 (70 FR 7024), EPA reorganized the Identification of plan section (section 52.2520) for subpart XX by listing and summarizing West Virginia's currently approved SIP requirements in paragraphs 52.2520(a) through (e). Paragraphs 52.2565(b) and (c) are being removed because EPA has determined that it is no longer necessary to codify the information found in these paragraphs. Paragraph 52.2565(a) is being amended to state that this historical information will continue to be made available in the CFR annual editions, Title 40 part 52 (years 2005 through 2012). These annual editions are available on line at the following url address: *http://www.gpo.gov/fdsys/browse/collection Cfr.action?collectionCode=CFR.*

*G. Multistate Removal Actions Affected by the National Low Emission Vehicle Program*

On January 24, 1995 (60 FR 4712), EPA promulgated 40 CFR 51.120, which established a ''SIP call'' mandating a LEV program, based on California's motor vehicle emissions, which would provide air pollutant emissions reductions for states located on the Ozone Transport Region (OTR). See,

CAA sections 177 and 184. The following OTR states are located in EPA region III: Delaware, the District of Columbia, Maryland, Pennsylvania, and the portion of Virginia that was included in the Consolidated Metropolitan Statistical Area (CMSA) for Washington, DC as of November 15, 1990. For each of these States' part 52 subparts, EPA added CFR regulations which cross-reference 40 CFR 52.120. The respective sections are: 52.433, 52.498, 52.1079, 52.2057, and 52.2453. However, on March 11, 1997, the U.S. Court of Appeals for the D.C. Circuit vacated the provisions of 40 CFR 51.20. *See, Virginia* v. *EPA, 108 F.3d 1397 (D.C. Cir. Ct. of Appeals, 1997; rehearing denied June 13, 1997.*

Subsequently, the EPA Region III States located in the OTR adopted a similar program known as the NLEV program, a collaborative effort of EPA, the OTC States, the automobile manufacturers, and others that would achieve emissions reductions equal to or greater than would be accomplished if the OTC States adopted the California LEV program under the authority of CAA section 177. Under the NLEV program, the States achieved the reductions the SIP call would have required. Therefore, EPA approved their respective NLEV SIP revisions on the following dates: December 28, 1999 (64 FR 72564) for Delaware, Maryland, Pennsylvania, and Virginia; and July 20, 2000 (65 FR 44981 for the District of Columbia. See 40 CFR 52.420(c), 52.1070(c), 52.2020(c)(1), 52.2420(c), and 52.470(c) respectively.

As a result of the Court's vacatur action and of EPA's subsequent approvals of the OTR States' NLEV programs, EPA has deemed sections 52.433, 52.498, 52.1079, 52.2057, and 52.2453 to be legally obsolete. In today's action, these five sections are being removed from the CFR.

It should be noted that since February 10, 2000 (65 FR 6698), the NLEV program has been superseded by EPA's issuance of a final rule promulgating Federal Tier 2 vehicle emission and fuel standards. This Federal Tier 2 program provides for stricter new vehicle emissions standards than that of the NLEV program, beginning with the phase-in of that program in model year 2004. Additionally, the Federal Tier 2 program was fully in place and was mandatory for all new subject vehicles on a national basis in model year 2006. At that time, the NLEV program ceased to exist for all states, and states' participation in the National NLEV ceased with the 2006 model year.

## III. Final Action

EPA has determined that the above-referenced rules should be removed or revised at this time. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 5, 2013 without further notice unless EPA receives adverse comment by July 8, 2013. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48 (1995)). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that

EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action which removes or revises outdated or obsolete part 52 language for Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon monoxide, Environmental Protection Agency, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 16, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart I—Delaware

■ 2. Section 52.422 (a) is revised to read as follows:

**§ 52.422 Approval status.**

(a) With the exceptions set forth in this subpart, the Administrator approves Delaware's plan for the attainment and maintenance of the national standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds that the plan satisfies all requirements of part D, title 1, of the Clean Air Act as amended in 1977.

(b) [Reserved]

■ 3. Section 52.432 is revised to read as follows:

**§ 52.432 Significant deterioration of air quality.**

(a) [Reserved]

(b) Regulation for preventing significant deterioration of air quality. The provisions of 52.21(p) are hereby incorporated and made a part of the applicable State plan for the State of Delaware.

(c) All applications submitted as of that date and supporting information required pursuant to § 52.21 from sources located in the State of Delaware shall be submitted to: Delaware Department of Natural Resources and Environmental Control, Air Resources Section, Division of Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901.

**§ 52.433 [Removed and reserved]**

■ 4. Section 52.433 is removed and reserved.

■ 5. Section 52.465 is revised to read as follows:

**§ 52.465 Original identification of plan section.**

(a) This section identifies the original ''Air Implementation Plan for the State of Delaware'' and all revisions submitted by Delaware that were federally approved prior to July 1, 1998. The information in this section is available in the 40 CFR, part 52 edition revised as of July 1, 1999, the 40 CFR, part 52, Volume 1 of 2 (§§ 52.01 to 52.1018) editions revised as of July 1, 2000 through July 1, 2011, and the 40 CFR, part 52, Volume 1 of 3 (§§ 52.01 to 52.1018) editions revised as of July 1, 2012.

(b) [Reserved]

### Subpart J—District of Columbia

**§ 52.472 [Amended]**

■ 6. In § 52.472, paragraphs (b) and (f) are removed and reserved.

**§ 52.473 [Removed and reserved]**

■ 7. Section 52.473 is removed and reserved.

**§ 52.479 [Removed and reserved]**

■ 8. Section 52.479 is removed and reserved.

**§ 52.498 [Removed and reserved]**

■ 9. Section 52.498 is removed and reserved.

■ 10. Section 52.515 is revised to read as follows:

**§ 52.515 Original identification of plan section.**

(a) This section identifies the original ''Air Implementation Plan for the District of Columbia'' and all revisions submitted by the District of Columbia that were federally approved prior to July 1, 1998. The information in this section is available in the 40 CFR, part 52 edition revised as of July 1, 1999, the 40 CFR, part 52, Volume 1 of 2 (§§ 52.01 to 52.1018) editions revised as of July 1, 2000 through July 1, 2011, and the 40 CFR, part 52, Volume 1 of 3 (§§ 52.01 to 52.1018) edition revised as of July 1, 2012.

(b) [Reserved]

### Subpart V— Maryland

**§ 52.1072 [Removed and reserved]**

■ 11. Section 52.1072 is removed and reserved.

**§ 52.1073 [Amended]**

■ 12. In § 52.1073, paragraphs (b), (c), and (d) are removed and reserved.

**§ 52.1074 [Removed and reserved]**

■ 13. Section 52.1074 is removed and reserved.

**§ 52.1077 [Removed and reserved]**

■ 14. Section 52.1077 is removed and reserved.

**§ 52.1078 [Removed and reserved]**

■ 15. Section 52.1078 is removed and reserved.

**§ 52.1079 [Removed and reserved]**

■ 16. Section 52.1079 is removed and reserved.

■ 17. Section 52.1100 is revised to read as follows:

**§ 52.1100 Original identification of plan section.**

(a) This section identifies the original ''Air Implementation Plan for the State of Maryland'' and all revisions submitted by Maryland that were federally approved prior to November 1, 2004. The information in this section is available in the 40 CFR, part 52, Volume 2 of 2 (§§ 52.1019 to the end of part 52) editions revised as of July 1, 2005 through July 1, 2011, and the 40 CFR, part 52, Volume 2 of 3 (§§ 52.1019 to 52.2019) edition revised as of July 1, 2012.

(b) [Reserved]

**§ 52.1118 [Removed and reserved]**

■ 19. Section 52.1118 is removed and reserved.

## Subpart NN—Pennsylvania

### § 52.2022 [Removed and reserved]

■ 20. Section 52.2022 is removed and reserved.

■ 21. In § 52.2023, paragraphs (d), (e), and (j) are removed and reserved, and paragraph (b) is revised to read as follows:

### § 52.2023 Approval status.

* * * * *

(b) With the exceptions set forth in this subpart, the Administrator approves Pennsylvania's plan for the attainment and maintenance of the national ambient air quality standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds that the plan satisfies all requirements of part D, Title 1, of the Clean Air Act as amended in 1977.

### § 52.2024 [Removed and reserved]

■ 22. Section 52.2024 is removed and reserved.

### § 52.2025 [Removed and reserved]

■ 23. Section 52.2025 is removed and reserved.

### § 52.2030 [Removed and reserved]

■ 24. Section 52.2030 is removed and reserved.

### § 52.2032 [Removed and reserved]

■ 25. Section 52.2032 is removed and reserved.

### § 52.2033 [Amended]

■ 26. In § 52.2033, paragraph (a) is removed and reserved.

### § 52.2034 [Removed and reserved]

■ 27. Section 52.2034 is removed and reserved.

### § 52.2037 [Amended]

■ 28. In § 52.2037, paragraph (a) is removed and reserved.

### § 52.2055 [Removed and reserved]

■ 29. Section 52.2055 is removed and reserved.

### § 52.2057 [Removed and reserved]

■ 30. Section 52.2057 is removed and reserved.

■ 31. Section 52.2058 is revised to read as follows.

### § 52.2058 Prevention of significant air quality deterioration.

(a) The requirements of sections 160 through 165 of the Clean Air Act are met by the regulations (25 PA Code § 127.81 through 127.83) adopted by the Pennsylvania Environmental Resources on October 28, 1983. All PSD permit applications and requests for modifications thereto should be submitted to: Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105. ATTN: Abatement and Compliance Division.

(b) [Reserved]

### § 52.2059 [Amended]

■ 32. In § 52.2059, paragraph (a) is removed and reserved.

■ 33. Section 52.2063 (a) is revised to read as follows:

### § 52.2063 Original identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the Commonwealth of Pennsylvania'' and all revisions submitted by Pennsylvania that were federally approved prior to February 10, 2005. The information in this section is available in the 40 CFR, part 52, Volume 2 of 2 (§§ 52.1019 to the end of part 52) editions revised as of July 1, 2005 through July 1, 2011, and the 40 CFR, part 52, Volume 3 of 3 (§§ 52.2020 to the end of part 52) edition revised as of July 1, 2012.

(b) [Reserved]

## Subpart VV—Virginia

■ 34. In § 52.2423, paragraphs (d), (e), (g), (j), and (k) are removed and reserved, and paragraphs (a), (f), (m), and (n) are revised to read as follows:

### § 52.2423 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Virginia's plan for the attainment and maintenance of the national standards.

* * * * *

(f) Section 9VAC 5–40–20.A.4. of the Virginia Regulations for the Control and Abatement of Air Pollution is not considered part of the applicable plan because it contradicts a previously approved section of the SIP.

* * * * *

(m) EPA approves as part of the Virginia State Implementation Plan the documents listed in Appendix M, Sections II.A. through II.E and Section II.G. (currently Regulation 5–20–21 E.1. through E.5 and E.7) of the Virginia Regulations for the Control and Abatement of Air Pollution submitted by the Virginia Department of Air Pollution Control on April 12, 1989.

(n) EPA approves as part of the Virginia State Implementation Plan the revised references to the documents listed in Appendix M, Sections II.A. and II.B. (currently Regulation 5–20–21E.1 and E.2) of the Virginia Regulations for the Control and Abatement of Air Pollution submitted by the Virginia Department of Air Pollution Control on February 12, 1993.

* * * * *

### § 52.2427 [Removed and reserved]

■ 35. Section 52.2427 is removed and reserved.

### § 52.2433 [Removed and reserved]

■ 36. Section 52.2433 is removed and reserved.

### § 52.2436 [Removed and reserved]

■ 37. Section 52.2436 is removed and reserved.

### § 52.2450 [Removed and reserved]

■ 38. Section 52.2450 is removed and reserved.

### § 52.2453 [Removed and reserved]

■ 39. Section 52.2453 is removed and reserved.

■ 40. Section 52.2465 is revised to read as follows:

### § 52.2465 Original identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the Commonwealth of Virginia'' and all revisions submitted by Virginia that were federally approved prior to March 1, 2000. The information in this section is available in the 40 CFR, part 52, Volume 2 of 2 (§§ 52.1019 to the end of part 52) editions revised as of July 1, 2000 through July 1, 2011, and the 40 CFR, part 52, Volume 3 of 3 (§§ 52.2020 to the end of part 52) edition revised as of July 1, 2012.

(b) [Reserved]

## Subpart XX—West Virginia

### § 52.2522 [Amended]

■ 41. In § 52.2522, paragraphs (a). (b), (c), and (h) are removed and reserved.

### § 52.2523 [Removed and reserved]

■ 42. Section 52.2523 is removed and reserved.

### § 52.2524 [Removed and reserved]

■ 43. Section 52.2524 is removed and reserved.

### § 52.2525 [Amended]

■ 44. In § 52.2525, paragraph (a) is removed and reserved.

### § 52.2528 [Amended]

■ 45. In § 52.2528, paragraph (b) is removed and reserved.

■ 46. Section 52.2565 is revised to read as follows:

**§ 52.2565 Original identification of plan section.**

(a) This section identifies the original ''Air Implementation Plan for the State of West Virginia'' and all revisions submitted by West Virginia that were federally approved prior to December 1, 2004. The information in this section is available in the 40 CFR, part 52, Volume 2 of 2 (§§ 52.1019 to the end of part 52) editions revised as of July 1, 2005 through July 1, 2011, and the 40 CFR, part 52, Volume 3 of 3 (§§ 52.2020 to the end of part 52) edition revised as of July 1, 2012.

(b) [Reserved]

[FR Doc. 2013–13353 Filed 6–5–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[EPA–R05–RCRA–2012–0377; FRL–9817–9]**

## Indiana: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is granting the State of Indiana final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on October 9, 2012, and provided for public comment. EPA received no comments. No further opportunity for comment will be provided. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization.

**DATES:** The final authorization will be effective on June 6, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R05–RCRA–2012–0377. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some of the information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy. You may view and copy Indiana's application from 9:00 a.m. to 4:00 p.m. at the following addresses: U.S. EPA Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, contact: Gary Westefer (312) 886–7450; or Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana 46204, contact: Dan Watts (317) 234–5345.

**FOR FURTHER INFORMATION CONTACT:** Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450, email *westefer.gary@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and request EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### B. What decisions have we made in this final rule?

We conclude that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Indiana final authorization to operate its hazardous waste program with the changes described in the authorization application. Indiana will have responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Indiana, including issuing permits, until the state is granted authorization to do so.

### C. What is the effect of this final rule?

This final rule requires all facilities in Indiana that are subject to RCRA to comply with the newly-authorized state requirements instead of the equivalent Federal requirements. Indiana has enforcement responsibilities under its state hazardous waste program for RCRA violations, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include among others, authorize EPA to:

1. Do inspections, and require monitoring, tests, analyses, or reports;

1. enforce RCRA requirements and suspend or revoke permits; and

3. take enforcement actions regardless of whether the state has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations that EPA is authorizing in this action are already in effect, and will not be changed by this action.

### D. Proposed Rule

On October 9, 2012 (77 FR 61326), EPA proposed to authorize changes to Indiana's hazardous waste program and opened the decision to public comment. The Agency received no comments on this proposal. EPA found Indiana's RCRA program to be satisfactory.

### E. What RCRA authorization has EPA previously granted Indiana to implement?

Indiana initially received Final Authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692); January 4, 2001, effective January 4, 2001 (66 FR 733); December 6, 2001 effective December 6, 2001 (66 FR 63331); October 29, 2004, effective October 29, 2004 (69 FR 63100); and November 23, 2005 effective November 23, 2005 (70 FR 70740).

**F. What changes are we proposing with today's action?**

On March 5, 2007, May 1, 2009, and October 25, 2011, Indiana submitted final program revision applications, seeking authorization of its changes in accordance with 40 CFR 271.21. We have determined that Indiana's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final Authorization. Therefore, we are granting Indiana final authorization for the following program changes (a table with the complete state analogues is provided in the October 9, 2012 proposed rule):

Burning of Hazardous Wastes in Boilers and Industrial Furnaces, Checklist 85, February 21, 1991 (56 FR 7134);

Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Corrections and Technical Amendments I, Checklist 94, July 17, 1991 (56 FR 32688);

Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendments II, Checklist 96, August 27, 1991 (56 FR 42504);

Coke Ovens Administrative Stay, Checklist 98, September 5, 1991 (56 FR 43874);

Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendments III, Checklist 111, August 25, 1992 (57 FR 38558);

Burning of Hazardous Wastes in Boilers and Industrial Furnaces; Technical Amendment IV, Checklist 114, September 30, 1992 (57 FR 44999);

Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations, Checklist 125, July 20, 1993 (58 FR 38816);

Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues, Checklist 127, November 9, 1993 (58 FR 59598);

Hazardous Air Pollutant Standards; Technical Corrections, Checklist 188.2, July 3, 2001 (66 FR 42292);

Zinc Fertilizers Made From Recycled Hazardous Secondary Materials, Checklist 200, July 24, 2002 (67 FR 48393);

Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium, Mercury, and Silver Containing Batteries, Checklist 201, October 7, 2002 (67 FR 62617);

NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors-Corrections, Checklist 202, December 19, 2002 (67 FR 77687);

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards, Checklist 203, July 30, 2003 (68 FR 44659);

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, Checklist 205, April 26, 2004 (69 FR 22601)

Hazardous Waste—Nonwastewaters From Production of Dyes, Pigments and Food, Drug and Cosmetic Colorants; Mass Loadings-Based Listing, Checklist 206, February 24, 2005 (70 FR 9138), as amended, Checklist 206.1, June 16, 2005 (70 FR 35032);

Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System, Checklist 207, March 4, 2005 (70 FR 10776), as amended, Checklist 207.1, June 16, 2005 (70 FR 35034);

Waste Management System; Testing and Monitoring Activities; Methods Innovation Rule and SW–846 Final Update IIIB, Checklist 208, June 14, 2005 (70 FR 34537), as amended, Checklist 208.1, August 1, 2005 (70 FR 44151);

Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury Containing Equipment, Checklist 209, August 5, 2005 (70 FR 45507);

Standardized Permit for RCRA Hazardous Waste Management Facilities, Checklist 210, September 8, 2005 (70 FR 53420);

Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures, Checklist 211, October 4, 2005 (70 FR 57769);

NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II), Checklist 212, October 12, 2005 (70 FR 59402); Burden Reduction Initiative, Checklist 213, April 4, 2006 (71 FR 16862);

Corrections to Errors in the Code of Federal Regulations, Checklist 214, July 14, 2006 (71 FR 40254);

Cathode Ray Tube Exclusion, Checklist 215, July 28, 2006 (71 FR 42928);

Exclusion of Oil Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas, Checklist 216, January 2, 2008 (73 FR 57);

NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments, Checklist 217, April 8, 2008 (73 FR 18970);

Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes, Checklist 218, June 4, 2008 (73 FR 31756); and

Academic Laboratories Generator Standards, Checklist 220, December 1, 2008 (73 FR 72912).

**G. Which revised state rules are different from the Federal rules?**

Indiana has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements. In 329 IAC 3.1–6–3, Indiana is more stringent than the Federal requirements: The state has added six hazardous wastes to its acute hazardous waste list that are not acute hazardous wastes in 40 CFR Part 261. In 329 IAC 3.1–9–2, Indiana maintains more stringent levels for groundwater protection for several of the constituents listed in Table 1 of 40 CFR 264.94. There are no ''Broader in Scope'' or other provisions that are more stringent than the Federal requirements in Indiana's rules in this application.

**H. Who handles permits after the final authorization takes effect?**

Indiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which EPA issues prior to the effective date of this final rule until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this final rule authorization. EPA will continue to implement and issue permits for HSWA requirements for which Indiana is not yet authorized.

**I. How does today's action affect Indian Country (18 U.S.C. 1151) in Indiana?**

Indiana is not authorized to carry out its hazardous waste program in ''Indian Country,'' as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Indiana;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, this action has no effect on Indian Country. EPA retains the authority to implement and administer the RCRA program in Indian Country.

**J. What is codification and is EPA codifying Indiana's hazardous waste program as authorized in this rule?**

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized

hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. Indiana's authorized rules, up to and including those revised January 4, 2001, have previously been codified through incorporation-by-reference, effective December 24, 2001 (66 FR 53724, October 24, 2001). We reserve the amendment of 40 CFR part 272, subpart P for the codification of Indiana's program changes until a later date.

**K. Statutory and Executive Order Reviews**

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by state law (see Supplementary Information, Section A. Why are revisions to state programs necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

*1. Executive Order 18266: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review*

The Office of Management and Budget has exempted this rule from its review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821 January 21, 2011).

*2. Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*3. Regulatory Flexibility Act*

This rule authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by state law. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*4. Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

*5. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.,* substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government).

*6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.,* substantial direct effects on one or more Indian tribes, or on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes).

*7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

*9. National Technology Transfer Advancement Act*

EPA approves state programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

*10. Executive Order 12988*

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

*11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings*

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

*12. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations*

Because this rule authorizes pre-existing state rules and imposes no additional requirements beyond those imposed by state law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

*13. Congressional Review Act*

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 et seq.) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until sixty (60) days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final authorization will be effective June 6, 2013.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 9, 2013.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2013–13445 Filed 6–5–13; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 64

**[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–8285]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

**DATES:** *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This rule meets the applicable standards of Executive Order 12988.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

**§ 64.6 [Amended]**

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region I** | | | | |
| Connecticut: | | | | |
| Branford, Town of, New Haven County | 090073 | April 5, 1973, Emerg; December 15, 1977, Reg; July 8, 2013, Susp. | July 8, 2013 ..... | July 8, 2013. |
| Bridgeport, City of, Fairfield County ..... | 090002 | August 7, 1973, Emerg; October 15, 1980, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Darien, Town of, Fairfield County ..... | 090005 | January 19, 1973, Emerg; January 2, 1981, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| East Haven, Town of, New Haven County. | 090076 | April 19, 1973, Emerg; February 1, 1978, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Fairfield, Town of, Fairfield County ..... | 090007 | April 7, 1972, Emerg; August 15, 1978, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Greenwich, Town of, Fairfield County ... | 090008 | February 4, 1972, Emerg; September 30, 1977, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Guilford, Town of, New Haven County | 090077 | October 20, 1972, Emerg; May 1, 1978, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Hamden, Town of, New Haven County | 090078 | May 3, 1973, Emerg; June 15, 1979, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Madison, Town of, New Haven County | 090079 | July 19, 1973, Emerg; September 15, 1978, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Milford, City of, New Haven County ..... | 090082 | January 14, 1972, Emerg; September 29, 1978, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| New Haven, City of, New Haven County. | 090084 | October 25, 1973, Emerg; July 16, 1980, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| North Haven, Town of, New Haven County. | 090086 | July 13, 1973, Emerg; September 17, 1980, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Norwalk, City of, Fairfield County ..... | 090012 | March 10, 1972, Emerg; April 3, 1978, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Stamford, City of, Fairfield County ..... | 090015 | March 10, 1972, Emerg; January 16, 1981, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Stratford, Town of, Fairfield County ..... | 090016 | August 18, 1972, Emerg; June 1, 1978, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| West Haven, City of, New Haven County. | 090092 | October 6, 1972, Emerg; January 17, 1979, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Westport, Town of, Fairfield County ..... | 090019 | October 8, 1971, Emerg; July 2, 1980, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Maine: | | | | |
| Auburn, City of, Androscoggin County .. | 230001 | August 27, 1971, Emerg; February 4, 1981, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Durham, Town of, Androscoggin County. | 230002 | April 24, 1975, Emerg; May 4, 1988, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Greene, Town of, Androscoggin County | 230475 | July 8, 1976, Emerg; May 3, 1990, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Leeds, Town of, Androscoggin County | 230003 | June 11, 1975, Emerg; July 16, 1990, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Lewiston, City of, Androscoggin County | 230004 | March 21, 1974, Emerg; September 28, 1979, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Lisbon, Town of, Androscoggin County | 230005 | June 30, 1975, Emerg; March 4, 1985, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Livermore, Town of, Androscoggin County. | 230173 | August 11, 1976, Emerg; May 3, 1990, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Livermore Falls, Town of, Androscoggin County. | 230006 | April 23, 1975, Emerg; August 5, 1991, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Mechanic Falls, Town of, Androscoggin County. | 230007 | May 19, 1975, Emerg; May 17, 1990, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Minot, Town of, Androscoggin County .. | 230008 | June 16, 1976, Emerg; May 17, 1990, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Poland, Town of, Androscoggin County | 230009 | September 2, 1975, Emerg; June 5, 1985, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Sabattus, Town of, Androscoggin County. | 230011 | October 13, 1976, Emerg; February 15, 1980, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Turner, Town of, Androscoggin County | 230010 | July 29, 1975, Emerg; June 19, 1985, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Wales, Town of, Androscoggin County | 230439 | November 10, 2004, Emerg; August 1, 2008, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| **Region III** | | | | |
| Maryland: | | | | |
| Cecil County, Unincorporated Areas ..... | 240019 | June 15, 1973, Emerg; April 4, 1983, Reg; July 8, 2013, Susp. | .....do ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Charlestown, Town of, Cecil County ..... | 240021 | February 20, 1975, Emerg; November 17, 1982, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Chesapeake City, Town of, Cecil County. | 240099 | December 5, 1974, Emerg; October 15, 1981, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Elkton, Town of, Cecil County ..... | 240022 | November 7, 1973, Emerg; March 18, 1980, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| North East, Town of, Cecil County ..... | 240023 | July 24, 1975, Emerg; October 15, 1981, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Perryville, Town of, Cecil County ..... | 240024 | April 23, 1974, Emerg; March 1, 1977, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Port Deposit, Town of, Cecil County ..... | 240025 | March 16, 1973, Emerg; February 16, 1977, Reg; July 8, 2013, Susp. | .....do ..... | Do. |
| Rising Sun, Town of, Cecil County ..... | 240158 | September 17, 1975, Emerg; May 15, 1986, Reg; July 8, 2013, Susp. | .....do ..... | Do. |

*do = Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: May 20, 2013.

**David L. Miller,**

*Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2013–13367 Filed 6–5–13; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket ID FEMA–2013–0002]**

## Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

## PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified | Communities affected |
|---|---|---|---|
| **Harris County, Texas, and Incorporated Areas Docket No: FEMA–B–1164** | | | |
| K100–00–00 (Cypress Creek) .. | Approximately 0.57 mile downstream of Treaschwig Road | +79 | City of Houston, Unincorporated Areas of Harris County. |
| | Approximately 1.1 miles upstream of the Waller County boundary. | +173 | |
| K111–00–00 (Turkey Creek) .... | Approximately 1,100 feet downstream of Hardy Toll Road | +90 | Unincorporated Areas of Harris County. |
| | Approximately 650 feet upstream of North Vista Drive ..... | +105 | |
| K116–00–00 (Schulz Gully) (backwater effects from Cypress Creek). | At the Cypress Creek confluence ..... | +85 | Unincorporated Areas of Harris County. |
| | Approximately 920 feet downstream of Aldine Westfield Road. | +85 | |
| K120–00–00 (Lemm Gully) (backwater effects from Cypress Creek). | At the Cypress Creek confluence ..... | +92 | Unincorporated Areas of Harris County. |
| | Approximately 0.4 mile upstream of Lockridge Drive ..... | +92 | |
| K120–01–00 (Senger Gully) (backwater effects from Cypress Creek). | At the Lemm Gully confluence ..... | +92 | City of Houston, Unincorporated Areas of Harris County. |
| | Approximately 100 feet upstream of I–45 ..... | +92 | |
| K124–00–00 (Seals Gully) ..... | Approximately 1,400 feet downstream of Candle Creek Road. | +102 | Unincorporated Areas of Harris County. |
| | Approximately 500 feet upstream of Spring Cypress Road | +125 | |
| K131–00–00 (Spring Gully) ..... | At the Cypress Creek confluence ..... | +106 | Unincorporated Areas of Harris County. |
| | Approximately 200 feet downstream of Spring Cypress Road. | +137 | |
| K131–03–03 (Tributary 2.1 to Spring Gully) (backwater effects from Spring Gully). | At the Spring Gully confluence ..... | +112 | Unincorporated Areas of Harris County. |
| | At the upstream side of T.C. Jester Boulevard ..... | +112 | |
| K131–04–00 (Tributary to Spring Gully) (backwater effects from Spring Gully). | At the Spring Gully confluence ..... | +121 | Unincorporated Areas of Harris County. |
| | Approximately 1,600 feet upstream of the Spring Gully confluence. | +122 | |
| K133–00–00 (Dry Gully) (backwater effects from Cypress Creek). | At the Cypress Creek confluence ..... | +112 | Unincorporated Areas of Harris County. |
| | Approximately 400 feet upstream of Champions Forest Drive. | +112 | |
| K140–00–00 (Pillot Gully) (backwater effects from Cypress Creek). | At the Cypress Creek confluence ..... | +118 | Unincorporated Areas of Harris County. |
| | At the downstream side of River Park Drive ..... | +118 | |
| K142–00–00 (Faulkey Gully) .... | At the Cypress Creek confluence ..... | +122 | Unincorporated Areas of Harris County. |
| | At the downstream side of Lakewood Forest Drive ..... | +123 | |
| K145–00–00 (Dry Creek) (backwater effects from Cypress Creek). | At the Cypress Creek confluence ..... | +139 | Unincorporated Areas of Harris County. |
| | At the downstream side of Jarvis Road ..... | +139 | |
| K152–00–00 (Tributary 37.1 to Cypress Creek). | Approximately 1,500 feet upstream of the Cypress Creek confluence. | +148 | Unincorporated Areas of Harris County. |
| | Approximately 920 feet downstream of U.S. Route 290 .... | +151 | |
| K155–00–00 (Tributary 40.7 to Cypress Creek). | At the Cypress Creek confluence ..... | +158 | Unincorporated Areas of Harris County. |
| | Approximately 1,580 feet downstream of U.S. Route 290 | +197 | |
| K157–00–00 (Tributary 42.7 to Cypress Creek). | At the Cypress Creek confluence ..... | +163 | Unincorporated Areas of Harris County. |
| | Approximately 2.0 miles upstream of Jack Road ..... | +196 | |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified | Communities affected |
|---|---|---|---|
| K159–00–00 (Channel A to Cypress Creek) (backwater effects from Cypress Creek). | At the Cypress Creek confluence | +151 | Unincorporated Areas of Harris County. |
| | Approximately 1,900 feet upstream of the Cypress Creek confluence. | +151 | |
| K160–00–00 (Rock Hollow) | At the Cypress Creek confluence | +163 | Unincorporated Areas of Harris County. |
| | Approximately 980 feet upstream of Mound Road | +206 | |
| K160–01–00 (Tributary 1.63 to Rock Hollow). | Approximately 0.6 mile upstream of the Rock Hollow confluence. | +166 | Unincorporated Areas of Harris County. |
| | Approximately 2.8 miles upstream of the Rock Hollow confluence. | +192 | |
| K185–00–00 and K172–00–00 (Tributary 44.5 to Cypress Creek). | At the Cypress Creek and K185–00–00 confluence | +166 | Unincorporated Areas of Harris County. |
| | Approximately 0.7 mile downstream of Mound Road | +206 | |
| L100–00–00 (Little Cypress Creek) (backwater effects from Cypress Creek). | At the Cypress Creek confluence | +130 | Unincorporated Areas of Harris County. |
| | Approximately 1,500 feet upstream of the Cypress Creek confluence. | +130 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Houston**

Maps are available for inspection at the Public Works and Engineering Department, 611 Walker Street, Houston, TX 77002.

**Unincorporated Areas of Harris County**

Maps are available for inspection at the Harris County Public Infrastructure Department, A&E Division, Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2013–13370 Filed 6–5–13; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Part 204

**RIN 0750–AH80**

## Defense Federal Acquisition Regulation Supplement; Clarification of ''F'' Orders in the Procurement Instrument Identification Number Structure (DFARS Case 2012–D040); Correction

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the amendatory language to a final rule published in the **Federal Register** on May 22, 2013, 78 FR 30231, regarding the Defense Federal Acquisition Regulation Supplement: Clarification of ''F'' Orders in the Procurement Instrument Identification Number Structure (DFARS Case 2012–D040). This correction makes one correction to the amendatory language.

**DATES:** *Effective Date:* June 6, 2013.

**FOR FURTHER INFORMATION CONTACT:** Fernell Warren, telephone 571–372–6089.

**SUPPLEMENTARY INFORMATION:**

### Correction

In the **Federal Register** of May 22, 2013 (78 FR 30231) in the amendatory language, correct the following:

**204.7003 [Corrected]**

■ 1. On page 30232, in the left hand column, amendatory instruction 2 is corrected to read as follows:

■ ''2. Section 204.7003 is amended by revising paragraphs (a)(3)(iii) and (vi) to read as follows:''

**Kortnee Stewart,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2013–13405 Filed 6–5–13; 8:45 am]

**BILLING CODE 5001–06–P**

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 252**

**RIN Number 0750–AG38**

## Defense Federal Acquisition Regulation Supplement; Government Support Contractor Access to Technical Data (DFARS 2009–D031); Correction

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the amendatory language to a final rule published in the **Federal Register** on May 22, 2013, 78 FR 30233, regarding the Defense Federal Acquisition Regulation Supplement; Government Support Contractor Access to Technical Data (DFARS 2009–D031). This correction makes two corrections to the amendatory language.

**DATES:** *Effective Date:* June 6, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, 571–372–6099.

**SUPPLEMENTARY INFORMATION:**

### Correction

In the **Federal Register** of May 22, 2013 (78 FR 30233) in the amendatory language, correct the following:

**252.212–7001 [Corrected]**

■ 1. On page 30238, in the center column, amendatory instruction 6a is corrected to read as follows:

■ ''6. Section 252.212–7001 is amended—

■ a. By removing the clause date ''(MAR 2013)'' and adding ''(MAY 2013)'' in its place.''

**252.227–7014 [Corrected]**

■ 2. On page 30238, in the right hand column, amendatory instruction 8b is corrected to read as follows:

■ ''8. Section 252.227–7014 is amended—

■ b. By revising paragraph (a)(15); and (b)(3)(iii) to read as follows:''

**Kortnee Stewart,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2013–13403 Filed 6–5–13; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 78, No. 109
Thursday, June 6, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 70

**[Docket No. PRM–70–9; NRC–2010–0372]**

## Nuclear Proliferation Assessment in Licensing Process for Enrichment or Reprocessing Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; denial.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM), PRM–70–9, submitted by the American Physical Society (APS or the petitioner). The petitioner requested that the NRC amend its regulations to require that each applicant for an enrichment or reprocessing (ENR) facility license include an assessment of the proliferation risks that construction and operation of the proposed facility might pose. The NRC is also responding to comments received from interested members of the public.

**DATES:** The docket for PRM–70–9 closed on June 6, 2013.

**ADDRESSES:** Please refer to Docket ID NRC–2010–0372 when contacting the NRC about the availability of information for this petition. You may access information related to this petition, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0372. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The incoming petition is available in ADAMS under Accession No. ML103260300.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Keith McDaniel, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5252, email: *Keith.McDaniel@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Summary of Rationale for Denial
II. Background
III. Petition Assertions and NRC Responses
IV. Public Comments on the Petition and NRC Responses
V. Determination of Petition

## I. Summary of Rationale for Denial

The petition requested that the NRC require that each applicant for an ENR facility license provide an assessment of the proliferation risks associated with the construction and operation of the proposed facility. While the NRC recognizes the importance of the petitioner's concerns about minimizing the risk of nuclear proliferation, the NRC is denying the petition for rulemaking. The petitioner has not shown that ENR applicants have a particular insight on proliferation issues or have access to the intelligence resources, capabilities, and information that would enable them to prepare a meaningful proliferation assessment. Therefore, the petitioner has not demonstrated that requiring an applicant to prepare and include such an assessment as part of its application would provide the NRC with meaningful information that would enhance the NRC's decision-making on the applicant's license application nor would such an assessment assist the NRC in carrying out its statutory responsibility to protect public health and safety and promote the common defense. Furthermore, as discussed more fully later in this document, the NRC's existing regulatory program and ongoing oversight of applicants and licensees ensure that they comply with requirements designed to minimize proliferation risks associated with the construction and operation of ENR facilities. These requirements include measures to prevent, detect, and defend against the unauthorized disclosure of ENR technology and the diversion of associated nuclear materials.

To the extent that the petitioner is concerned about diversion of nuclear materials (or sabotage) at an NRC-licensed facility, the NRC's regulations and oversight activities already address these concerns. In fulfilling its mandate to ensure that the licensing of a facility is not harmful to the public health and safety and is not inimical to the common defense and security, the NRC performs detailed examinations, including inspections, of all aspects of a facility's safeguards and security measures to ensure compliance with regulatory requirements that are intended to prevent, detect, and defend against unauthorized access to the facility and malicious acts directed against the facility. At the time of initial licensing, the NRC reviews the ENR license application to ensure that the applicant has developed and will implement policies, procedures, and programs that enable the applicant to meet all applicable NRC safety and security requirements. Throughout the life of the facility, NRC staff implements a robust inspection and oversight program to ensure that the licensee properly implements all applicable safety and security policies, procedures, and programs set forth in its license and is in compliance with all applicable regulatory requirements. The NRC's regulatory requirements help ensure that facilities are constructed and operated in accordance with proper physical security, safeguards measures, and information protection requirements.

To the extent that the petitioner is concerned about generating greater foreign interest in new ENR technologies and/or a spread of sensitive technology to countries of proliferation concern, the President and

the Congress have the primary responsibility for developing and promoting the Federal Government's national nuclear nonproliferation goals and policies. The U.S. Department of State (DOS), working with the U.S. Department of Energy (DOE) and other Federal agencies, has the primary responsibility for implementing these goals and policies domestically and internationally. These agencies have the necessary insights on proliferation issues and access to the intelligence resources, capabilities and information to perform meaningful analyses of the proliferation risks associated with sensitive technologies, including sensitive ENR technologies. They routinely work through diplomatic and other channels to address proliferation concerns outside of the U.S. In addition to establishing the terms and conditions for U.S. cooperation with countries that have legitimate nuclear energy and research programs, these Executive Branch agencies monitor the international threat environment to ascertain which foreign nations or sub-national organizations are or may be trying to illicitly obtain or use sensitive nuclear technologies, including ENR technology, for proliferation purposes.

The accurate assessment and deterrence of global proliferation risk requires examination of numerous variables, largely in international and military arenas that are far afield from the NRC's core domestic licensing and oversight activities. The NRC interacts regularly with the Federal agencies that have expertise in these areas and is kept informed of existing and emerging proliferation threats and activities. This interaction helps ensure that the NRC's licensing activities are aligned with the nation's nonproliferation goals and policies. These agencies routinely bring to the Commission's attention information pertinent to the NRC's regulatory responsibilities. An NRC domestic licensing proceeding is not the proper forum for establishing national nonproliferation policies and objectives. It would be neither prudent nor useful for the NRC to devote resources in a domestic licensing proceeding to address national policy objectives that are already being addressed by the appropriate Federal agencies with the expertise and mandate to do so.

One of the NRC's primary concerns is to ensure that the facilities it regulates that manufacture or use enriched uranium and plutonium do so safely and securely. The NRC's regulations on physical security, information security, material control and accounting, cyber security, and export control create a tapestry of protection for the material and technology at NRC-regulated fuel cycle facilities. These regulations, which focus on preventing the theft or diversion of radioactive materials and classified technologies, take proliferation considerations into account. The petitioner has not demonstrated that the NRC's current licensing program is deficient.

The U.S. Government is an active member and participant in the implementation of international treaties and agreements designed to minimize proliferation risks world-wide, including the Nuclear Non-Proliferation Treaty, the U.S. Agreement with the International Atomic Energy Agency (IAEA) regarding the application of safeguards in the U.S., and the U.S. Additional Protocol to that agreement. The NRC takes seriously its responsibility to support the U.S. Government's role in the international nonproliferation regimes to which it is a signatory, and to implement relevant U.S. Government nonproliferation goals and policies at NRC licensee sites. However, the changes sought by the petitioner will not provide the NRC with meaningful information on proliferation risks that would enhance the NRC's domestic licensing process or aid the NRC in implementing the U.S. Government's nonproliferation policies and goals.

In sum, the NRC's existing comprehensive licensing framework, which includes extensive regulatory requirements and ongoing oversight, addresses the facility-specific controls that must be implemented domestically to minimize proliferation risk. The NRC ensures that proper physical security, national and international safeguards, and information security measures are applied at all NRC licensee sites. With insights gained from regular interagency cooperation and information exchange, the NRC also ensures that its licensing activities are aligned with the broader national nuclear nonproliferation policies and goals established by the President and Congress. The petition does not demonstrate how a license-by-license nuclear proliferation assessment would lead to the identification of significantly new or meaningful information beyond that which is already available and that would enhance NRC decision-making on a specific license application.

## II. Background

On November 10, 2010, the NRC received a PRM filed by Francis Slakey on behalf of the APS and assigned it Docket No. PRM–70–9. The NRC published a notice of receipt of the petition and request for public comment in the **Federal Register** (FR) on December 23, 2010 (75 FR 246).

The petition requests that the NRC amend part 70 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Special Nuclear Material,'' to require each applicant for an ENR facility license in the United States to include a nuclear proliferation assessment in its application. Specifically, the petition requests that the NRC's regulations be amended to read:

**§ 70.22 Contents of applications.**

(o) Nuclear proliferation assessment. Each applicant for the license of an enrichment or reprocessing facility shall include an assessment of the proliferation risks that construction and operation of the proposed facility might pose.

The following section contains a summary of the petition assertions and NRC responses.

## III. Petition Assertions and NRC Responses

*Assertion 1*

The petition asserted that performing a nuclear proliferation assessment would be consistent with the NRC's requirement to evaluate whether issuance of a license ''would be inimical to the common defense and security or to the health and safety of the public.'' The petition further asserted that it does not presume to know the best method for implementing the proposed rule change and makes the following two comments for NRC staff consideration:

- General Electric-Hitachi Global Laser Enrichment LLC (GLE) carried out an independent nuclear proliferation assessment of its laser enrichment facility without: (1) Jeopardizing any classified or proprietary information, (2) delaying the timeline, or (3) adding substantially to the cost of the project. Under the APS proposed rule change, all ENR license applicants would be required to carry out such an assessment and submit it to the NRC staff for review.
- The term ''Nuclear Proliferation Assessment [Statement]'' (NPAS) is used in the Atomic Energy Act (AEA) of 1954, as amended, under Section 123, in the context of U.S. agreements for cooperation with a foreign nation. The NRC participates in these assessments with other Federal entities, in the manner described in Section 123. In particular, the NRC has already engaged in the preparation and review of an NPAS for an enrichment technology. In 1999, the NRC participated with other Federal entities in the NPAS that supported the decision to allow the Separation of Isotopes by Laser

Excitation (''SILEX'') technology to be transferred from Australia to the United States. Similarly, under the APS proposed rule change, the NRC staff could work with other Federal entities in reviewing the nuclear proliferation assessment provided by the license applicant.

*NRC Response to Assertion 1*

The NRC disagrees with the petitioner that an applicant seeking an ENR facility license from the NRC is the appropriate entity to conduct a nuclear proliferation assessment. A commercial entity would not have access to the intelligence resources, capabilities, and information essential to compiling a meaningful nuclear proliferation assessment. An assessment based solely on information available to a commercial entity would be of little value to the NRC in assessing the proliferation risks associated with licensing a particular facility. The task of assessing proliferation risks is best performed by the Federal Government. Other Federal agencies, led by the DOS and including the DOE, the U.S. Department of Defense (DOD), and the U.S. Department of Commerce (DOC), have primary responsibility for implementing national nonproliferation policies and goals and conducting proliferation assessments of sensitive technologies, including nuclear technologies. The NRC routinely interacts with and provides its technical expertise and support to these agencies.

Once a foreign-developed ENR technology has advanced to the point where an applicant is seeking an NRC license, the appropriate U.S. Government agencies have already made a favorable determination that the technology in question can be adequately protected for development and production within the U.S. For example, the SILEX technology was imported into the U.S. under the terms of an agreement negotiated between the governments of the U.S. and Australia under Section 123 of the AEA (123 Agreement). This agreement allows for the sharing of Restricted Data (ENR technology) between the U.S. and Australia. This Agreement, negotiated by the DOS and approved by the President, included the required NPAS for the SILEX technology.

Under Section 123 of the AEA, the Federal Government prepares an NPAS to demonstrate that the terms of a bilateral agreement are consistent with the requirements of the AEA, with particular emphasis on the adequacy of safeguards and other control mechanisms for the protection of nuclear technologies and materials, and that U.S. assistance provided under the bilateral agreement will not be used by the recipient country to further any military or nuclear explosive purpose. Under Section 123, the DOS is responsible for preparing an NPAS, with technical assistance from other Federal agencies including the NRC. However, Section 123 does not apply to or address license applications submitted to the NRC utilizing a domestically developed ENR technology.

The ENR technology that is solely developed in the U.S. is subject to the requirements set forth in Section 151c of the AEA. Section 151c requires that any person in the United States who makes any invention or discovery useful in the production or utilization of special nuclear material (SNM) must make a report of such invention or discovery to the DOE. This report need not be made if an application has been filed with the U.S. Patent and Trademark Office. Consistent with the guidance set forth in Atomic Energy Commission's ''Novel Methods of Isotope Separation: Procedures for Reports on Research'' (37 FR 15393; August 1, 1972), upon receipt of the report, the DOE will provide the person with appropriate guidance on the proper classification of information, components, technology or other matter related to the invention or discovery. If the DOE determines that any of this information, components, technology or other matter is Restricted Data, the person would be directed to protect it in accordance with the requirements set forth in Sections 141 through 143 and Sections 224 through 227 of the AEA. The NRC expects that any sensitive information, components and technology associated with an ENR technology developed in the United States would be subject to these requirements. Furthermore, the NRC is confident that these restrictions on the possession, use and dissemination of Restricted Data adequately address the proliferation risks associated with a domestically developed ENR technology. Therefore, the NRC is also confident that information on a domestically developed ENR technology is adequately protected and proliferation risks associated with a particular ENR technology have already been assessed by the U.S. Government prior to an NRC licensing proceeding. If an applicant receives a license for a facility utilizing a domestically developed ENR technology, that facility would be subject to the NRC's comprehensive regulatory framework.

Consistent with its statutory authorities under the AEA, the Commission will not issue a license for an ENR facility if it determines that such a facility would constitute an unreasonable risk to the health and safety of the public or would be inimical to the common defense and security. The AEA does not require a nuclear proliferation assessment as a prerequisite to the domestic licensing of an ENR facility. However, as explained more fully in response to petition Assertion 2, the NRC's existing comprehensive licensing framework adequately addresses proliferation risks and concerns associated with access to ENR technology and construction and operation of an ENR facility in the U.S. This framework ensures that access to NRC-licensed ENR facilities and technology is properly controlled through appropriate physical protection, personnel security, and information protection requirements. Furthermore, the NRC, through its ongoing interaction with other Federal agencies, ensures that its licensing framework and oversight activities are aligned with national nonproliferation policies and objectives.

The petitioner pointed out that GLE performed an independent nuclear proliferation assessment of its laser enrichment facility. The NRC notes that this assessment was performed for GLE's own corporate purposes and not in response to an NRC licensing requirement. The GLE did not submit the assessment as part of its application and the NRC did not consider this assessment as part of its licensing review of the proposed GLE facility.

The independent proliferation assessment performed by GLE is separate and distinct from the NPAS performed pursuant to the Section 123 agreement between the U.S. Government and the Government of Australia. This NPAS was prepared by the DOS and supported the decision to allow the SILEX technology to be transferred from Australia to the United States. Thus, the proliferation risks associated with the SILEX technology had already been considered by the Executive Branch prior to GLE submitting a license application to the NRC.

To the extent that the petition is concerned about developing and promoting global implementation of U.S. nonproliferation policies and goals, the DOS, with the assistance of other Federal agencies within the Executive Branch, has primary responsibility, expertise and dedicated resources for leading such efforts. These agencies regularly assess the international threat environment to ascertain which foreign nations or sub-national organizations are or may be trying to obtain or use ENR technology for proliferation

purposes and work through diplomatic and other channels to deter such efforts. An NRC domestic licensing proceeding is not the proper forum for establishing national nonproliferation policies and objectives. Furthermore, the petitioner has failed to demonstrate how a license-by-license nuclear proliferation assessment prepared by an applicant with far less relevant proliferation information available to it than either the NRC or the Executive branch, would assist the NRC in carrying out its statutory responsibility to protect public health and safety and to promote common defense and security when licensing an ENR facility.

One of the NRC's primary concerns is to ensure that the facilities it regulates that manufacture or use enriched uranium and plutonium do so safely and securely. The NRC's regulations on physical security, information security, material control and accounting, cyber security, and export control create a tapestry of protection for the material and technology at NRC-regulated fuel cycle facilities. These regulations, which focus on preventing the theft or diversion of radioactive materials and classified technologies, take proliferation considerations into account. The petitioner has not demonstrated that the NRC's current licensing program is deficient.

*Assertion 2*

The petition asserted that the NRC's current licensing process is insufficient to address proliferation concerns. The petition stated that the current licensing process uses a ''net effect'' in which proliferation-relevant issues are spread across the license application and never synthesized. Therefore, nonproliferation is not given an adequate level of attention, because the NRC does not require a nuclear proliferation assessment as a part of its licensing process for ENR facilities. Consequently, the petition claimed that the current process may overlook some properties of the technology which merit attention in a proliferation context.

In addition, the petition stated that key questions regarding the degree of proliferation risk of an ENR technology could go unaddressed under the NRC's ''net effect'' approach. According to the petitioner, such questions include, but would not be limited to, the following:

- Could the design of the technology be altered easily to allow for diversion of nuclear material?
- Could the facility be constructed and operated in a manner that is undetectable?
- Are there unique components of the technology whose acquisition would indicate the construction of such a facility and could be easily tracked?

*NRC Response to Assertion 2*

The NRC disagrees that its current approach to licensing ENR facilities is insufficient. Safety and security, including proliferation risks, are adequately addressed by the NRC's comprehensive licensing framework, which includes: (1) Extensive regulatory requirements, (2) ongoing oversight, and (3) active Federal interagency cooperation. Each piece of this framework is described in the following paragraphs.

With regard to the NRC's extensive regulatory requirements, ENR licensees must comply with applicable requirements in 10 CFR parts 25, 30, 40, 50, 70, 73, 74, 95, and 110. Part 30 of 10 CFR, ''Rules of General Applicability to Domestic Licensing of Byproduct Material;'' 10 CFR part 40, ''Domestic Licensing of Source Material;'' 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities;'' and 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material;'' address the domestic licensing of byproduct material, source material, reprocessing facilities, and facilities that handle SNM, respectively.

Regulations under 10 CFR part 73, ''Physical Protection of Plants and Materials,'' prescribe requirements for the establishment and maintenance of a physical protection system to protect SNM at fixed sites and in transit, and to protect plants where SNM is used. These regulations provide requirements to protect against radiological sabotage and prevent the theft and diversion of SNM. For example, 10 CFR 73.67 and 73.71 include physical protection requirements for SNM of moderate and low strategic significance and reporting requirements for safeguards events. In addition, 10 CFR 73.73 and 73.74 include requirements for advance notice and protection of export and import shipments of specified materials. Further, appendix B to 10 CFR part 73 contains the Criteria for Security Personnel (training) for these types of facilities and appendix C to 10 CFR part 73 includes detailed requirements for a safeguards contingency plan.

Regulations under 10 CFR part 74, ''Material Control and Accounting of Special Nuclear Material,'' include requirements for the control and accounting of SNM at fixed sites and for documenting the transfer of SNM. For example, general performance objectives in 10 CFR 74.31, 74.41, and 74.51 address material control and accounting (MC&A) requirements for SNM of low, moderate, and strategic significance. To meet these objectives, licensees must have a Fundamental Nuclear Material Control Plan that includes, for example, a measurement control program, physical inventories, and the ability to aide in or conduct investigations of SNM losses. Additionally, 10 CFR 74.33 requires licensees authorized to possess equipment capable of enriching uranium or operating an enrichment facility, and producing, or possessing a specified amount of SNM, to have an MC&A system that will protect against and detect unauthorized production of SNM. Finally, 10 CFR 74.11 includes requirements for licensees that possess specified quantities to report loss, theft or attempted theft or unauthorized production of SNM to the NRC. By requiring capabilities to measure, control, detect, and report the loss, theft or attempted theft or unauthorized production of SNM, these regulations address nuclear proliferation risks and the concern stated in the petition's first question (''Could the design of the technology be altered easily to allow for diversion of nuclear material?'').

The requirements in 10 CFR part 95, ''Facility Security Clearance and Safeguarding of National Security Information and Restricted Data,'' and 10 CFR part 25, ''Access Authorization,'' require licensees to maintain programs for protecting and preventing unauthorized access to classified National Security Information, Restricted Data, and associated classified technology. These requirements are designed to restrict access to nuclear technology to only those with a need-to-know and ensure that adequate controls exist to protect and handle such information through physical protective measures, information security requirements, and administrative security controls. The NRC requirements address the actual and postulated threats against facilities and the sensitive information they possess. These regulations are part of the NRC's extensive effort to address proliferation risks and concerns by ensuring that only authorized individuals have access to classified information and technologies, and they are legally obligated to protect it from unauthorized disclosure.

In addition, 10 CFR part 110, ''Export and Import of Nuclear Equipment and Material,'' includes requirements for controlling the export and import of nuclear materials and equipment by NRC or Agreement State licensees. Export license reviews address proliferation concerns by requiring the U.S. Government to obtain assurances from the recipient foreign government that, among other things: (1) IAEA

safeguards will be applied as required by Article III (2) of the Treaty on the Nonproliferation of Nuclear Weapons; (2) adequate physical security measures will be maintained; and (3) the material being exported will not be transferred to another country without prior U.S. Government approval. Domestic importers of nuclear materials are required to be licensed by the NRC or an Agreement State to possess the material before they are allowed to import the material into the U.S. By controlling import and export of nuclear materials and equipment, these requirements address proliferation risks and concerns.

''Ongoing oversight'' refers to the NRC's inspection of licensee and applicant facilities, to enforce compliance with NRC regulatory requirements. If any regulatory concerns are identified during these inspections, licensees may be required to take corrective actions, including implementing compensatory measures as appropriate, to address these concerns.

For example, the NRC staff conducts annual inspections of all enrichment licensees and their contractors to ensure compliance with 10 CFR part 25 and 95 requirements. The DOE, under a reimbursable agreement with the NRC, participates in these inspections, certifying and accrediting on behalf of the NRC all classified computer networks used by enrichment licensees and their contractors. If security risks are identified during these inspections, the licensee must take steps to correct the security risk. Additionally, if these inspections identify generic risks applicable to all licensees, the NRC will supplement its regulations and/or issue orders addressing these risks, as appropriate.

The term ''active interagency cooperation'' refers to the NRC's ongoing contact and active collaboration with other government agencies to assist in meeting the U.S. Government's broader national nuclear nonproliferation goals and policies. The NRC interacts continuously with other Federal agencies at a variety of levels to share information related to various threats and activities, including those related to proliferation concerns, inside and outside the U.S.

The President and the Congress have the primary responsibility for developing and promoting the Federal Government's national nuclear nonproliferation goals and policies. The DOS, working with the DOE and other Federal agencies, has the primary responsibility for implementing those goals and policies both domestically and internationally. The NRC actively cooperates with the DOS, the DOE, and other Federal agencies including, but not limited to, the DOC, the DOD, the U.S. Department of Homeland Security, the Federal Bureau of Investigation, and the various intelligence agencies in this process. Through this cooperation, the NRC ensures that its licensing activities are aligned with the Nation's nonproliferation goals and policies.

In addition to these cooperative activities, the NRC also collaborates with representatives of other U.S. Government agencies in various multilateral and bilateral initiatives to promote nuclear safety and security. For example, with respect to exports, the NRC actively supports U.S. Government participation in the Nuclear Suppliers Group (NSG). The NSG is a group of nuclear supplier states that seeks to prevent the proliferation of nuclear weapons through the implementation of two sets of guidelines for nuclear exports and nuclear related exports. The NSG guidelines are: (1) Guidelines for the Export of Nuclear Material, Equipment and Technology (INFCIRC/254/Rev.10/Part1); and (2) Guidelines for Transfers of Nuclear Related Dual-Use Equipment, Materials, Software and Related Technology (INFCIRC/254/Rev.7/Part2).

The NSG guidelines aim to ensure that nuclear trade for peaceful purposes does not contribute to the proliferation of nuclear weapons or other nuclear explosive devices, and that the international trade and cooperation in the nuclear field is not hindered unjustly in the process. The NRC is responsible for implementing the NSG Part 1 guidelines, consistent with its authority under the AEA, in 10 CFR part 110. The DOC implements the NSG Part 2 guidelines in its Export Administration Regulations. The NRC's export licensing criteria are consistent with, and in some instances more comprehensive than, the NSG Part 1 guidelines. Part 1 of the NSG guidelines contains a ''Trigger List'' that is illustrative of commodities ''especially designed or prepared'' for the processing, use, or production of special fissionable material. In addition to the export licensing criteria that must be met, 10 CFR part 110 also incorporates Part 1 by essentially reproducing the Trigger List in several appendices to part 110. While 10 CFR part 110 is maintained and updated to be consistent with the NSG guidelines, the appendices to 10 CFR part 110 are illustrative because the NRC has long recognized that the type of nuclear technologies and equipment that need to be controlled for proliferation purposes is dynamic and will continue to evolve. The NRC's 10 CFR part 110 regulations, and ongoing interaction with the DOC and other Federal agencies, ensure that the NRC has access to and considers relevant information on ENR technologies. This information exchange with other U.S. Government agencies and multilateral organizations such as the NSG, addresses the concerns raised in the petitioner's third question: ''Are there unique components of the technology whose acquisition would indicate the construction of such a facility and could be easily tracked?''

The NRC also works closely with the DOE to ensure classified information is protected. The DOE requirements for protection of classified material are generally reflected in NEI 08–11, ''Information Security Program Guidelines For Protection Of Classified Material At Uranium Enrichment Facilities,'' published by the Nuclear Energy Institute (NEI). In addition to complying with the NRC's requirements for the protection of classified material, all the NRC's enrichment licensees and their contractors that possess classified material have voluntarily committed to adhere to additional information security measures in NEI 08–11. These measures are contained in each licensee's Standard Practice Procedures Plan (security plan), which is approved by the NRC as part of the issuance of a facility security clearance prior to facility operation.

Finally, the petition's second question stated that the NRC's ''net effect'' may not address the question ''could the facility be constructed and operated in a manner that is undetectable?'' As described further in response to petition Assertion 4, the NRC is not aware of any new ENR technologies that would be too small or too efficient to detect. The NRC has determined that existing requirements and controls minimize the risk of proliferation by, for example, protecting against unauthorized access and disclosure, as well as theft and diversion of nuclear materials and equipment. Additionally, the NRC expects that future technologies and facilities, such as the one proposed by GLE, will emit unique environmental signatures that will enable identification of a specific nuclear facility.

Therefore, for the reasons previously explained, the NRC has determined that the multiple layers of its comprehensive licensing framework adequately address proliferation risks and concerns associated with the NRC licensing of domestic ENR facilities. Separate from the license application reviews, the NRC continuously reviews the domestic and international threat environment for

changes that pose credible and specific threats to the NRC or its licensees. As new threats are identified, the NRC will supplement its requirements by rule or order, as appropriate, and consistent with its statutory authority to protect the public health and safety and to promote the common defense and security of the United States.

*Assertion 3*

The petition asserted that the requested rule change is in the national security and energy interests of the U.S., and that energy security, national security and nonproliferation are coupled. The petition stated its support for nuclear power, but emphasizes that nuclear power and nuclear materials must be deployed in a safe, secure, and responsible manner.

*NRC Response to Assertion 3*

The NRC agrees that nuclear power and nuclear materials must be developed and utilized in a safe, secure and responsible manner. Furthermore, the NRC agrees that the security of the Nation's energy supply and reducing proliferation risks are related to the national security of the U.S. As previously explained in the response to petition Assertion 2, the NRC's comprehensive licensing framework adequately addresses proliferation concerns associated with the construction and operation of an ENR facility in the United States. The petitioner fails to demonstrate that the NRC's licensing framework does not adequately protect the public health and safety and promote the common defense and security of the U.S.

*Assertion 4*

The petition asserted that, over the next several years, the NRC will be reviewing license applications for new technologies that could carry substantial proliferation risks. This assertion is based on findings in a report entitled ''Technical Steps to Support Nuclear Arsenal Downsizing,'' released on February 18, 2010, by an APS Study Group, ''APS Panel on Public Affairs'' (*see http://www.aps.org/link/downsizing.cfm*). The petition stated that the membership of this APS Study Group comprises some of the country's leading experts on both the technical and policy issues related to nuclear power, nuclear weapons, and proliferation.

The petition asserted that the APS Study Group found that some of the new technologies could be proliferation ''game changers,'' since they would lead to smaller, more efficient, and possibly less expensive methods for the production and use of nuclear materials that would be more difficult to detect. The APS Study Group cited laser isotope separation as an example of a new technology that is substantially smaller and more energy efficient than centrifuge enrichment technology. Consequently, the petition stated that this technology has raised proliferation concerns. The petition stated that the IAEA is sufficiently concerned that existing detection technologies are not adequate to address detection of covert facilities, and that the IAEA established a division specifically tasked with improving detection technology. The petition also stated that the DOE has a similar program tasked with carrying out research and development to improve detection technology, with one effort dedicated to detecting laser enrichment.

*NRC Response to Assertion 4*

The NRC acknowledges that new technologies may pose proliferation risks. However, the NRC is not aware of any existing ENR technologies that cannot be detected or pose proliferation risks that are not addressed by the NRC's existing licensing framework. Similarly, the NRC is not aware of, and the petition did not identify, any new technologies that would be ''game changers'' because they would be less expensive, too small, or too efficient to detect.

For example, on September 25, 2012, the NRC issued a license for the GLE facility in Wilmington, North Carolina. The GLE has stated that its laser enrichment facility will be more efficient and cost-effective than a comparably sized gas centrifuge plant. That facility will not, however, be small or difficult to detect. Rather, the GLE facility's energy consumption will be similar to that of a gas centrifuge facility and the facility's size will be only one-third to one-half smaller than that of a gas centrifuge facility. The proposed facility will need nearly 100 acres, its main operations building will have an area of approximately 600,000 square feet, and there will be sections approximately 160 feet high. Additionally, the NRC expects that technologies and facilities, such as the one proposed by GLE, will emit unique environmental signatures that will enable identification of a specific nuclear facility.

The NRC recognizes that the IAEA and the DOE are developing new detection methods for clandestine facilities and that these technologies will be important in international efforts to combat nuclear proliferation. The NRC staff will use information related to new detection technologies from these IAEA and DOE programs as appropriate in its licensing programs.

The NRC continues to coordinate with other Federal agencies to assess the threat environment and work with licensees and the nuclear industry to develop appropriate strategies and requirements to address identified threats. Should the NRC identify new threats or unique proliferation risks that are not currently addressed by its licensing framework, the NRC will take appropriate steps (e.g., issuance of orders or revised regulations) to address those risks.

*Assertion 5*

The petition asserted that the NRC can address new risks by elevating the priority of nonproliferation, which could best be accomplished by including a nuclear proliferation assessment in the ENR licensing process. The petition stated that members of the U.S. House of Representatives' Nuclear Security Caucus reached a similar conclusion in a letter dated June 30, 2010, which they sent to the Commission (ADAMS Accession No. ML101870023). In this letter, the members of the Nuclear Security Caucus discussed the proliferation paths associated with enrichment programs, such as the theft at the URENCO facility in the Netherlands. Specifically, the members noted that the ''uncovering of A.Q. Khan's clandestine proliferation networks has taught us that we can never be too careful in protecting nuclear materials and technologies.'' The members concluded that while a formal assessment of the proliferation risks of the technology will not ensure that nuclear technologies are not diverted to weapons production or other military purposes, nuclear proliferation assessments can provide an additional and perhaps crucial layer of protection against their proliferation and use against the U.S.

*NRC Response to Assertion 5*

The NRC agrees that the U.S. must remain vigilant in protecting nuclear materials and technologies. The NRC is committed to protecting public health and safety and promoting the common defense and security. Protecting the Nation's nuclear facilities and materials is a priority of the NRC that is articulated in the NRC's mission statement and is one of the two strategic goals identified in the NRC's Strategic Plan. As described in response to petition Assertion 2, the NRC's regulatory requirements and programs, and ongoing interagency cooperation,

adequately address existing proliferation risks and concerns. The NRC is not aware of any new information that would lead the NRC to conclude that its licensing framework does not adequately protect the public health and safety and the common defense and security.

Furthermore, the NRC's licensing framework is flexible and adaptable; the NRC continually assesses the threat environment and coordinates with its Federal partners, including the DOS, DOE, and DOC. Should the NRC identify new risks that are not addressed by its licensing framework, the NRC would take appropriate steps to address these risks. Accordingly, the NRC disagrees that the best way to address proliferation concerns is to require an ENR applicant to submit a proliferation assessment.

*Assertion 6*

The petition asserted that the successful commercialization of ENR technologies may itself stimulate the interests of proliferants.

*NRC Response to Assertion 6*

The NRC's licensing responsibilities under the AEA are regulatory in nature; the NRC does not encourage or discourage the development of a particular technology. Moreover, it is not the NRC's role, nor is it within the NRC's capabilities, to restrict inquiry into the feasibility of scientific concepts associated with the nuclear fuel cycle. Whether or not the issuance of an NRC license may demonstrate that a technology is feasible or commercially viable is not a consideration in the NRC licensing process.

When a license application is received, the NRC reviews the application and makes a licensing determination consistent with its statutory responsibility to protect the public health and safety and promote the common defense and security. As described in response to petition Assertion 2, the NRC has determined that its licensing framework enables it to meet these responsibilities. However, should the NRC identify new risks or threats, it would supplement this framework consistent with its statutory responsibility, as appropriate.

## IV. Public Comments on the Petition and NRC Responses

The notice of receipt of the PRM invited interested persons to submit comments. The public comment period closed on March 8, 2011. The NRC received responses from 2,389 commenters. Most of these responses were identical form emails from individuals who supported the petition. There were also 50 comment letters from individuals, members of Congress, and interested groups that supported the petition. Two comment letters, one from a nuclear industry representative and one from an individual, opposed the petition.

Combining similar public comments resulted in 19 comment categories. A summary of the comments and the NRC's responses follows.

*Comment Category 1: NRC's authority and obligation to require a nuclear proliferation assessment as part of the licensing process.*

The petition and 42 comment letters included statements related to this category. The petition requested that the NRC include nuclear proliferation assessments as part of the domestic licensing process, stating that such an assessment is consistent with the NRC's requirement to evaluate whether the issuance of a license ''would be inimical to the common defense and security or to the health and safety of the public.'' Forty-one commenters stated either that the NRC has the authority or that the NRC has the obligation to require its applicants to perform a nuclear proliferation assessment. One commenter added that it is within the capabilities of the NRC staff to review such an assessment. One commenter stated that the Congress is reviewing the AEA and is currently discussing whether to include a nuclear proliferation assessment in the NRC's regulatory process. One commenter asserted that the AEA contains no requirement for the NRC to perform a nuclear proliferation assessment in the context of domestic licensing.

*NRC Response to Comment Category 1*

As discussed in the response to petition Assertion 2, the NRC has determined that its licensing framework adequately addresses proliferation concerns associated with the licensing of ENR facilities and that requiring such an assessment would not assist the NRC in carrying out its statutory responsibility to protect public health and safety and promote the common defense. If the NRC finds supplementation of its requirements is needed, it will take appropriate action, consistent with its statutory responsibility.

*Comment Category 2: Energy security, national security and nonproliferation are coupled.*

One commenter stated that there is a direct relationship between fuel for nuclear energy and nuclear weapons proliferation, because uranium enrichment provides fuel for nuclear power and the material for making a nuclear bomb.

*NRC Response to Comment Category 2*

The NRC acknowledges that uranium enrichment provides fuel for nuclear power reactors. However, the NRC disagrees that fuels for nuclear energy and nuclear weapons proliferation have a direct relationship. The NRC-licensed nuclear power plants do not use weapons-grade SNM, and any NRC-issued commercial enrichment license would not authorize the production of weapons-grade SNM. In addition, the NRC has an inspection program that ensures that enrichment facilities are not modified to produce weapons-grade SNM.

*Comment Category 3: New nuclear technologies may present unique proliferation risks.*

Thirty-five comment letters made statements related to this category. The petition stated that over the next several years, the NRC will be reviewing license applications for new technologies that could carry substantial proliferation risks. Twenty-two commenters made a similar comment. Nineteen commenters agreed with the petition's statement that new technologies could be proliferation ''game changers,'' since they would lead to smaller, more efficient, and less expensive technology for the production and use of nuclear materials that would be more difficult to detect.

Additionally, one commenter requested that the NRC conduct a thorough review of all technology involved in the laser enrichment project to identify the technologies or components that are most proliferation-prone or that would be hardest to acquire by other countries or would-be proliferators. Another commenter asserted that new proliferation risks from laser enrichment methods are not very amenable to the ''black box'' technique (exporting technology in a ''black box'' to protect proprietary and proliferation secrets), stating that this method is currently used to export technology from enrichment and reprocessing plants.

*NRC Response to Comment Category 3*

The NRC acknowledges that new enrichment technologies may pose proliferation risks, and therefore facilities using such technology must be subject to a comprehensive regulatory regime to ensure the safety and security of that technology. However, as noted in response to petition Assertion 2, the NRC has a comprehensive licensing framework designed to ensure that ENR facilities are operated in a safe and secure manner. Further, as noted in

response to petition Assertion 4, the NRC is not aware of, and the petitioner and commenters have not identified, any new ENR technologies that ''are game changers'' because they are too small, efficient, or inexpensive to detect.

As described in response to petition Assertion 2, the NRC also participates with other U.S. Government agencies in various organizations such as the NSG, which seek to prevent the proliferation of nuclear weapons through the implementation of two comprehensive export control lists. The DOE, DOC, and DOS respectively regulate exports of nuclear reactors and fuel cycle technologies, dual-use components and technologies, and U.S. Munitions Lists commodities to ensure peaceful use and to prevent the proliferation of nuclear weapons. The NRC licensees are required to comply not only with NRC regulations but all relevant Federal laws and regulations.

The ''black box'' concept mentioned by one commenter is a mechanism that can be used to control access to information and/or technology by ensuring that only individuals with a verified need-to-know and appropriate clearance are given access to it. The black box concept is consistent with the NRC's protective measures for restricting access to sensitive and classified technologies and/or information. The NRC's regulations governing access to such technologies and information implement Federal Government standards and requirements for the protection of sensitive and classified technologies and/or information. Although the ''black box'' concept provides a supplemental means to protect classified information and/or technology, its use may not supersede NRC regulatory requirements.

*Comment Category 4: Commercialization of enrichment technology may increase interest, which could result in increased proliferation risks. Even a non-commercially viable process can pose proliferation risks, if the process is successfully implemented.*

Twenty-one comment letters made statements related to this category. The petition asserted that commercialization of the technology may itself stimulate proliferation interests. Sixteen commenters agreed with the petitioner. A commenter stated that successful development of a commercially viable process is irrelevant, because even inefficient pilot-scale facilities can pose significant proliferation risks. Another commenter stated that feasibility, not commercial viability, is the key determinant of proliferation risks. Finally, a commenter asserted that GLE's operation of a test loop, and potential move to a larger facility would be a clear signal that the technology works, thus attracting interest in it.

*NRC Response to Comment Category 4*

As explained in response to petition Assertion 6, the NRC's licensing responsibilities are regulatory in nature. The NRC, as an independent regulatory agency, does not encourage or discourage the development of a particular technology. In addition, it is not the NRC's role, nor is it within the NRC's capabilities, to restrict inquiry into scientific concepts associated with the nuclear fuel cycle. A concern that the issuance of an NRC license may demonstrate that a technology is feasible or commercially viable is not a consideration in the NRC licensing process. When evaluating a license application, the NRC's role is to determine if the applicant has satisfied NRC licensing requirements, including demonstrating that a proposed facility would not constitute an unreasonable risk to the health and safety of the public or would not be inimical to the common defense and security. If the NRC determines that an applicant has failed to satisfy NRC licensing requirements, including demonstrating that the facility or technology could not be operated in such a manner, the NRC would deny the license application.

To the extent that the commenters are concerned that the issuance of a license or the successful operation of a new enrichment technology may increase international interest in that technology, as explained in response to petition Assertion 2, the NRC's extensive regulatory requirements, ongoing NRC oversight, and other Federal programs ensure that classified design details of the technology are protected from potential proliferators.

*Comment Category 5: Sufficiency of the current regulatory process to address nuclear proliferation issues.*

Fourteen comment letters included statements related to this category. Twelve commenters supported petition Assertion 2 that the current regulatory process is insufficient to address nuclear proliferation issues, while two commenters took the opposing view.

One commenter supporting the petition stated that a regulatory gap exists in the NRC's regulations that would be filled by requiring a nuclear proliferation assessment in domestic licensing. The commenter claimed that the gap in the current domestic licensing framework restricts consideration of proliferation issues to the narrow questions of whether or not a facility meets the NRC's regulations for material protection, control and accounting, and protection of sensitive information. The commenter stated that such a limited review does not take into account broader issues related to the indirect impacts of NRC licensing of sensitive fuel cycle facilities on the global nonproliferation regime.

Another commenter supporting the petition stated that the current regulatory process for assessing proliferation is defective in that it does not provide an integrated risk assessment of this potential but is instead less focused and therefore less definitive than it needs to be to fulfill the NRC's ''common defense and security'' mission. One commenter stated that requiring a nuclear proliferation assessment for domestic licensing would encourage awareness of proliferation concerns in commercial entities that could be translated into design features that improve the proliferation resistance of future facilities. A commenter stated that when considering proliferation concerns of a pending NRC license application, the NRC should seek the views of other government agencies responsible for providing for the common defense, and that the NRC have staff capable of formally assessing these views. One commenter mentioned that currently no one is conducting a nuclear proliferation assessment of nuclear technology. Similarly, another commenter stated that while a nuclear proliferation assessment alone will not curtail proliferation, it can provide an added layer of protection that can help restrict the covert spread of advanced nuclear fuel technologies.

One commenter stated that whether new ENR technologies would significantly increase the risk of proliferation depends on many factors, including: (1) The probability of detecting a clandestine facility; (2) whether a declared facility can be effectively safeguarded; (3) whether technology can be used in the production of highly-enriched uranium (relevant for enrichment technologies only); and (4) whether the intellectual property for technology that the NRC chooses not to license would revert to a foreign entity for development instead. The commenter asserted that, due to the technical nature of these factors, the NRC is the most qualified body to conduct a proliferation assessment and should require a nuclear proliferation assessment as part of its domestic licensing process.

One commenter supporting the petition stated that because so few facilities are actually selected for safeguards by the IAEA in the U.S.,

there is less awareness here among industry and operators than abroad.

One commenter opposing the petition stated that although the petitioner rightly invokes elements of the AEA that speak to licensing activities that ''would be inimical to the common defense and security or to the health and safety of the public,'' the petition fails to indicate what current shortfalls there are in licensees' obligations regarding information protection or physical protection of such facilities.

*NRC Response to Comment Category 5*

Commenters claim the NRC's existing regulatory framework is not sufficient for several reasons, including: (1) No one is conducting a nuclear proliferation assessment of nuclear technology risks, (2) there is a regulatory gap because the NRC's consideration of proliferation risks is too narrow, and (3) the NRC's process fails to include an integrated risk assessment. The NRC disagrees with these comments. As explained in response to petition Assertion 2, the NRC's existing comprehensive licensing framework adequately addresses proliferation risks by, for example, including requirements to prevent unauthorized disclosure of classified matter and technology, and provide physical protection of nuclear equipment and materials.

The commenters have not identified a regulatory gap or proliferation concern that is not adequately addressed in the current licensing framework. The NRC is not aware of, and the petitioner and commenters did not identify, any specific shortcomings in the NRC's comprehensive licensing framework where a nuclear proliferation assessment by license applicants would provide significant and meaningful information that would enhance NRC decision-making or provide an ''additional layer of protection'' against proliferation risks necessary for the NRC to carry out its responsibilities.

In addition, commenters suggest that the NRC does not adequately consider broader nuclear nonproliferation policies and goals. Specifically, commenters stated that the NRC does not consider the impacts that its domestic licensing actions may have upon the broader global nonproliferation regime, and the NRC should consult with other agencies when considering the proliferation risks of a pending license application. As described in response to petition Assertion 2, the NRC interacts with other Federal agencies and receives information regarding various threats and activities, including those related to proliferation concerns. In addition, the NRC routinely cooperates with other U.S. Government agencies on matters relating to the nation's security. Through this extensive cooperation, the NRC ensures that its licensing activities are aligned with the nation's larger nonproliferation goals and policies. Further, the U.S. Government, often supported by the NRC, is actively engaged in the international nonproliferation regime as a Member State at the IAEA, the NSG, and the Nuclear Energy Agency.

In response to the commenter stating that a nuclear proliferation assessment requirement would encourage awareness of proliferation concerns that could be translated into design features that improve the proliferation resistance of future facilities, the NRC's existing licensing framework provides regulatory requirements that address design features needed to protect classified information, ensure physical security of licensed material, and protect against the loss, theft or attempted theft, or unauthorized production of SNM. Applicants of ENR facilities would be aware of these design requirements and would be required to address them in their facility designs and in their license applications. A proliferation assessment, therefore, would add little benefit to what is already required under the existing regulations. As discussed in response to Comment Category 13, incorporation of safeguards and MC&A requirements early in the design phase can be more efficient than retrofitting them later.

Finally, the NRC agrees that there are a number of factors that could influence whether a new ENR technology would increase the risk of proliferation, including for example: (1) The probability of detecting a clandestine facility; (2) whether a declared facility can be effectively safeguarded; (3) whether technology can be used in the production of highly-enriched uranium (relevant for enrichment technologies only); and (4) whether the intellectual property for technology that the NRC chooses not to license would revert to a foreign entity for development.

In response to the factor regarding clandestine facility detection, the NRC is not aware of any commercial enrichment plant that will not have a significant footprint and will therefore be difficult to detect, including GLE's proposed laser enrichment facility. However, as previously described, the NRC's licensing framework is flexible and adaptable. If a future technology presents proliferation risks that are not addressed by the current framework, the NRC will act appropriately to protect the public health and safety and promote the common defense and security.

The NRC agrees that to address proliferation risks, ENR facilities need to have adequate safeguards. Existing NRC requirements and on-going NRC oversight programs ensure that all NRC-licensed nuclear facilities implement safeguards measures. In addition, certain U.S. facilities may be subject to IAEA safeguards inspections.

The NRC is also sensitive to the concern that new technologies can be used to produce highly-enriched uranium. All enrichment facility applicants have stated in their applications specific selected possession limits that limit enriched uranium production to enrichments no greater than 10 weight percent uranium 235. Highly-enriched uranium has a greater than 20 percent concentration of uranium 235 or uranium 233. Although it is theoretically possible to make equipment changes at a facility to produce enrichments greater than the facility's licensed possession limit, the NRC's inspections are designed to verify that licensee facilities do not engage in diversion, unauthorized production, and over-enrichment of SNM.

Finally, the NRC recognizes that if it denies a license, there is a possibility that the intellectual property for the technology may be developed in another country. However, as a regulatory agency, when making a particular licensing decision the NRC does not consider whether the intellectual property or technology associated with a license that is denied would revert to a foreign entity. As described in response to petition Assertion 6, the NRC's licensing responsibilities under the AEA are regulatory in nature. The NRC will review each license application and make a licensing determination consistent with its statutory responsibilities. If the NRC determines that issuance of a license would be harmful to the public health and safety or inimical to common defense and security, the NRC will deny that license application.

*Comment Category 6: Suggested methods for implementing the proposed rule.*

Five comment letters included statements related to this category. Several commenters provided suggested methods for implementing the petitioner's proposed rulemaking.

One commenter suggested that, in order to determine the most sensitive areas of laser enrichment technologies and determine if they pose additional risks, the NRC should baseline the risks of gaseous diffusion and centrifuge

technology versus laser enrichment technologies.

Several commenters suggested specific content for a required nuclear proliferation assessment. One commenter assumed that in reviewing a nuclear proliferation assessment, the NRC would go beyond the document itself and take into account classified information pertaining to proliferation risks relevant to the licensing action. Another commenter stated that a nuclear proliferation assessment should address the novelty of the technology and the U.S. and international measures that will be put in place to prevent proliferation. While another commenter stated that in addition to the technical considerations mentioned in the petition, a proliferation assessment should take a broader view and analyze the potential global policy impacts associated with the NRC licensing sensitive fuel cycle facilities. The commenter cited, as an example, the DOE's 1999 ''Nonproliferation Impacts Assessment for the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel'' (DOE/EIS–0306D) that considered three technical factors and four policy factors associated with a proposal to use a U.S. facility to chemically treat a stockpile of U.S. spent nuclear fuel.

One commenter stated that a nuclear proliferation assessment could be one vehicle for remedying the issues identified in the APS petition but believes that the NRC staff could also identify an equivalent alternative to address the petitioner's assertions that maximized staff efficiency, transparency, and effectiveness.

*NRC Response to Comment Category 6*

The NRC does not agree that laser enrichment facility risks need to be baselined against the risks of gaseous diffusion plants and centrifuge technology to determine the most sensitive areas of laser enrichment technologies and determine if they pose additional risks. The NRC's regulations apply to all current and future commercial enrichment facilities in the United States. As discussed in response to petition Assertion 2, the NRC has determined that its existing licensing framework adequately addresses proliferation risks by, for example, including requirements to prevent unauthorized disclosure of classified matter and sensitive technologies, and provide physical protection of nuclear equipment and materials. Because the existing licensing framework is adequate, a baselining study of other facilities is not necessary to assess regulatory compliance or proliferation risks.

The NRC will not speculate about suggested content for a ''required'' nuclear proliferation assessment. As previously discussed, the NRC has determined that in light of the current licensing framework, revising 10 CFR part 70 to require a proliferation assessment would not provide new and significant information that would enhance the NRC's decision-making or assist the NRC in carrying out its statutory responsibilities.

*Comment Category 7: The NRC's decision to license new technology will set a precedent for the international nuclear industry.*

Two comment letters included statements related to this category. One commenter stated that the NRC continues to have influence as a leader in the movement to improve nuclear safeguards, safety, and security; thus, an NRC decision to require a nuclear proliferation assessment as part of the licensing process would help move international nuclear industry consensus in that direction. Another commenter stated that the NRC's approval of new technology is likely to serve as a precedent for greater use elsewhere.

*NRC Response to Comment Category 7*

The NRC does not agree that its decision to license a domestic ENR facility utilizing a particular enrichment technology would necessarily cause other countries to develop that particular technology. Many other factors would play a role in a particular government's pursuit of ENR technology, including its political will, technical expertise, financial capital, and international obligations. Additionally, as stated in response to petition Assertion 1, speculative assertions regarding the potential influence of NRC decisions are not considered in domestic licensing proceedings. The DOS, working with the DOE and other Federal agencies, has the primary responsibility for implementing the Federal Government's national nuclear nonproliferation goals and policies. The NRC does strive to improve nuclear safety and security internationally as well as domestically. However, as stated previously, the NRC does not agree with the comment that requiring the NRC's licensees to submit a nuclear proliferation assessment of the risks of constructing and operating an ENR facility would further the goal of improving nuclear safeguards, safety, or security.

*Comment Category 8: Industry is committed to protecting against proliferation.*

One comment letter opposing the petition stated that (1) uranium enrichment facilities have voluntarily committed to implement additional measures to enhance the protection of information associated with classified enrichment technologies, and (2) these additional commitments are incorporated into facility-specific security plans. The commenter also stated that its organization has developed a guidance document endorsed by the NRC that provides guidance to enrichment facility licensees to assist in protecting against proliferation of classified technology, information, and equipment.

*NRC Response to Comment Category 8*

The NRC recognizes that NRC enrichment licensees and their contractors that possess classified material have voluntarily committed to adhere to additional information security measures not addressed in 10 CFR part 95. These voluntary security enhancements are set forth in NEI 08–11, ''Information Security Program Guidelines for Protection of Classified Material at Uranium Enrichment Facilities,'' published by the NEI. These measures are contained in each licensee's security plan. This plan is reviewed and approved by the NRC as part of the issuance of a facility security clearance prior to facility operation. Adherence to the security plan is also required by a condition in each license.

*Comment Category 9: NRC should consider terrorism as part of the licensing process.*

Two comment letters included comments in this category. One commenter stated that the ever-present threat of terrorism is a reason for a nuclear proliferation assessment being part of the licensing process. The other commenter suggested that the petition's suggestion to perform a nuclear proliferation assessment does not go far enough, and instead, a ''nuclear proliferation and terrorism assessment'' should be required. This assessment would evaluate ''beyond-design-basis'' proliferation and terrorism impacts by considering diversion and theft scenarios by adversaries with capabilities exceeding the design basis threats for theft or diversion of SNM. The commenter claimed that this would make the assessment comparable to the aircraft impact assessment required for new nuclear plant applications in 10 CFR 50.150.

*NRC Response to Comment Category 9*

The NRC agrees that protection measures for its regulated facilities should address known threats, including the threats from overt, malevolent acts that may involve violence. The NRC interacts regularly with its Federal partners to remain current on potential threats directed against NRC-licensed facilities and keeps its licensees informed of changes to the threat environment. The NRC's physical protection requirements in 10 CFR part 73 require that licensees protect against credible attacks from various adversary scenarios. The NRC's comprehensive licensing framework is flexible and adaptable, and will be updated as necessary to reflect protective measures to address the changing threat environment. In the event the NRC determines that additional measures are needed to protect against a potential threat, the NRC would supplement its requirements by rule or order, as appropriate.

The commenters failed to demonstrate that a ''nuclear proliferation and terrorism assessment'' would provide significant and meaningful information that would enhance the NRC's decision-making when licensing an ENR facility. As discussed in response to petition Assertions 1 and 2, the NRC has determined that in light of the current comprehensive licensing framework, revising 10 CFR part 70 to require a proliferation assessment would not assist the NRC in carrying out its statutory responsibilities.

*Comment Category 10: Proliferation risks should be assessed early in the regulatory process.*

Four comment letters supporting the petition included comments in this category. One commenter stated that it is imperative that we understand what world we are about to create instead of discovering the proliferation consequences after the fact. Other commenters stated that it is important for proliferation assessments to be prepared before new nuclear technologies are licensed, instead of waiting to deal with situations in which technology may be proliferating due to commercial demands or because of clandestine use. One commenter stated that waiting to deal with such a situation is contrary to the agency's principal mission to protect the health and safety of the public and to assure the common defense and security.

*NRC Response to Comment Category 10*

The safety and security of nuclear materials and facilities are assessed throughout the NRC domestic licensing process. As discussed in the response to the petition Assertion 2, the NRC's comprehensive licensing framework addresses proliferation risks by, for example, including requirements to prevent the unauthorized disclosure of classified matter and sensitive technologies, and provide physical protection of nuclear equipment and materials. The NRC's regulatory framework is adequate to address proliferation concerns throughout the licensing process. The NRC, however, acknowledges that future technologies may pose new or unique proliferation risks. Because the NRC's licensing framework is flexible and adaptable, if the NRC determines that a new technology or threat necessitates additional requirements to protect the public health and safety or promote the common defense and security, the NRC will supplement its requirements by rule or order, as appropriate.

*Comment Category 11: NRC's consideration of proliferation risks and the National Environmental Policy Act (NEPA).*

Two comment letters included comments in this category. Citing *San Luis Obispo Mothers for Peace* v. *NRC,* 449 F.3d 1016 (9th Cir. 2006), one commenter stated that the NRC is already obligated under NEPA to analyze proliferation implications of any new nuclear technologies because NEPA requires consideration of ''the full range of risks to the common defense and security potentially arising from its licensing decision, and must consider all reasonable alternatives that could eliminate or mitigate those risks.'' This commenter also claimed that the NRC has a ''double standard,'' because in its environmental impact statements (EIS) it addresses national security concerns that support licensing decisions but dismisses national security concerns that undermine licensing decisions as beyond the scope of the EIS. This commenter further claimed that the NRC demonstrates a lack of judgment by generally assessing a wide range of environmental impacts but not performing a thorough nonproliferation assessment of the proposed GLE facility. The commenter attached comments on the draft EIS for the proposed GLE facility for purposes of incorporating them in this PRM record.

Another commenter took the opposing view, asserting that NEPA does not require a nuclear proliferation assessment.

*NRC Response to Comment Category 11*

Comments regarding NEPA are beyond the scope of the petition. The petition requests that the NRC implement a requirement to perform a nuclear proliferation assessment consistent with its statutory authority under the AEA. The petition did not request that the NRC implement a requirement to perform a nuclear proliferation assessment under NEPA. In addition, comments on the draft EIS for the proposed GLE facility are outside the scope of this PRM and were addressed by the NRC in the final EIS issued in February 2012 (ADAMS Accession Nos. ML12047A040 and ML12047A042).

*Comment Category 12: U.S. obligations under binding United Nations Security Council Resolution 1540 paragraph 3(d).*

Two comment letters supporting the petition included comments in this category. Both commenters stated that a nuclear proliferation assessment by the NRC for sensitive technologies would implement U.S. obligations under binding United Nations Security Council Resolution 1540 paragraph 3(d) to establish, develop, review, and maintain appropriate effective national export and trans-shipment controls over materials, equipment, and technology that could assist the development of weapons of mass destruction.

One commenter stated that the framework for legal nuclear export controls codified in the Energy Reorganization Act of 1974 (ERA), the Nuclear Non-Proliferation Act (NNPA), and subsequent legislation supports the NRC's independent analysis of the proliferation significance of licensed nuclear exports. The commenter also stated that relevant Executive Orders and regulations provide appropriate procedures for Executive Branch agencies to provide relevant views on foreign policy and national security judgments in the licensing process. The commenter further stated that appeals procedures also enable license applicants or others to seek review of adverse decisions. Thus, the nuclear proliferation assessment sought by the APS will not disrupt NRC export licensing functions. Instead, the nuclear proliferation assessment will contribute to the achievement of important nonproliferation objectives.

*NRC Response to Comment Category 12*

United Nations Security Council Resolution 1540 Section (3)(d) requires all United Nations-member states to adopt and enforce appropriate and effective laws against the proliferation of weapons of mass destruction, their means of delivery, and related materials. The U.S. Government has established broad policies designed to address U.S.

proliferation concerns. However, United Nations Resolution 1540 does not require the NRC to conduct a nuclear proliferation assessment in an NRC domestic licensing process. Similarly, there is no requirement in the AEA, ERA, NNPA, or other legislation requiring the NRC to conduct a nuclear proliferation assessment as part of its domestic licensing process.

It is not clear to which Executive Orders the commenter is referring, and the NRC is not aware of any Executive Orders requiring a nuclear proliferation assessment in an NRC domestic licensing process. To the extent that the issues raised by the commenter address broader foreign policy issues, other Executive Branch agencies have primary responsibility for addressing proliferation concerns and foreign policy initiatives.

Regarding the commenter's reference to export controls, the AEA and NRC regulations (10 CFR part 110) provide comprehensive export controls for nuclear equipment and material under NRC jurisdiction, as discussed in the response to petition Assertion 2. Other Executive Branch agencies are also responsible for implementing export controls for items of concern for proliferation purposes. For example, the DOC's Bureau of Industry and Security implements export controls over dual-use items under its Export Administration Regulations, while the DOS's Directorate of Defense Trade Controls implements export controls over items of a military nature under its International Trafficking in Arms regulations.

*Comment Category 13: Proliferation assessments aid safeguards.*

Three comment letters supporting the petition included comments in this category. One commenter stated that standards should be established to ensure that sensitive nuclear facilities are designed to support effective safeguards against any kind of diversion or misuse of SNM. This commenter also stated that requiring industries to prepare a nuclear proliferation assessment will serve the nuclear industry as well, in that steps to facilitate safeguards are more likely to be incorporated into the design of the facilities rather than be retrofitted later with higher cost and reduced effectiveness.

Another commenter stated that the objective of institutionalizing the safeguards-by-design process ''is to provide a procedure by which international and national safeguards, physical security, and other nonproliferation objectives are fully integrated into the overall design and construction process for a nuclear facility, from initial planning throughout design and construction and with benefit to operation; with the goal of increasing the safeguardability, protectability and proliferation resistance of facilities.'' A proliferation assessment can determine whether a facility can meet higher safeguards standards or whether there is something inherent in the technology that makes it harder to safeguard. The commenter also asserted that the NRC needs to ensure that a proper assessment of laser enrichment technology is conducted. The commenter stated that the NRC must ensure that no sensitive information is publicly revealed and that the NRC must consult with DOE experts when reviewing the proliferation assessment on the GLE facility.

*NRC Response to Comment Category 13*

The NRC agrees that effective safeguards against diversion and misuse of SNM are necessary. The NRC also agrees that incorporation of safeguards through application of the NRC's MC&A and other related requirements early in the design phase can be more efficient than retrofitting them later. As discussed in response to petition Assertion 2, the NRC's comprehensive regulatory infrastructure (specifically, 10 CFR parts 73 and 74), addresses the physical protection of SNM against radiological sabotage, theft, and diversion, and MC&A of SNM, protects against diversion and misuse of SNM. These NRC requirements have been and continue to be applied by applicants and licensees to facilities in early design phases. In addition, the NRC staff is working with the DOE to assess if meaningful IAEA inspections can be implemented at a laser enrichment facility without improperly revealing classified matter.

The NRC agrees with comments noting that (1) Safeguards-by-Design is an important tool for addressing the implementation of safeguards requirements, and (2) it is important to design a facility so that classified information is not revealed. The term Safeguards-by-Design is a design process that considers safeguards requirements early in the design of a facility. As previously stated, the NRC's existing regulatory framework supports an enrichment facility applicant's assessment of safeguards considerations early in the design process of their respective facilities.

*Comment Category 14: Whether additional steps are needed to ensure that employees do not increase proliferation risks.*

Two comment letters included comments in this category. One commenter, supporting the petition, stated that history demonstrates that employees in the nuclear industry can increase the risk of proliferation. The commenter asserted that these technologies have spread covertly around the world in part because one individual (A.Q. Khan) stole plans from his employer (URENCO); therefore, additional steps are necessary to prevent employees from improperly gaining access to even more advanced nuclear technologies.

One commenter disagreed and states that A.Q. Khan invariably gets invoked in the proliferation discussion, but wrongly so. The commenter asserted that ''the U.S. intelligence community was well aware'' of A.Q. Khan's activities and A.Q. Khan continued his extended proliferation efforts due to politics and policy, not technological limitations.

*NRC Response to Comment Category 14*

The NRC disagrees that it needs to take additional steps to prevent nuclear industry employees from gaining access to and disclosing sensitive nuclear technologies and information to would-be proliferants. Parts 25 and 95 of 10 CFR include comprehensive requirements governing access to SNM and sensitive enrichment technology. These requirements are designed to ensure that: (1) Access to nuclear technology is restricted to those with an appropriate clearance and a need-to-know, and (2) adequate controls exist to protect and prevent the unauthorized disclosure of classified information and the diversion of nuclear materials considered important to the national security. For example, access authorization requirements address an employee's suitability, trustworthiness and reliability before and during the time he/she is working at the facility. Additionally, periodic reviews of an individual's background and trustworthiness continue during the individual's employment. Upon termination, employees are informed of their continuing responsibilities with respect to protection of information. Violations of these requirements can result in civil and criminal penalties. The NRC conducts inspections to verify compliance with these requirements. In addition, as previously described, the NRC regularly coordinates with other Federal agencies, including the intelligence community, to assess potential and real threats to information, facilities, and individuals.

*Comment Category 15: NRC should follow the DOE's example of conducting*

*nonproliferation impact assessments in the context of major proposed actions involving domestic processing of SNM.*

One comment letter supporting the petition included comments in this category. The commenter stated that the DOE has conducted several nonproliferation impact assessments in the context of major proposed actions involving domestic processing of SNM and that the NRC should follow its example.

*NRC Response to Comment Category 15*

For the reasons discussed in response to petition Assertion 2, the NRC has determined that its existing licensing framework is adequate and preparing a proliferation assessment would not assist the NRC in carrying out its statutory responsibilities to protect the public health and safety and promote the common defense and security. Therefore, it is unnecessary for the NRC to require ENR facility applicants to conduct such assessments. The NRC, however, will continue to work closely with other Federal agencies to ensure that its licensing activities are consistent with broader U.S. nonproliferation goals and policies and that nuclear materials and technologies continue to be used in a safe and secure manner.

*Comment Category 16: NRC should require a proliferation assessment for all fuel cycle facility license applications.*

One comment letter supporting the petition included comments in this category. The commenter stated that the NRC should increase the scope of the petition by requiring proliferation assessments for all fuel cycle facilities seeking to produce, possess, and/or use SNM under 10 CFR parts 50 and 70, including mixed oxide fuel fabrication facilities and uranium conversion plants. The commenter suggested that the intensity of the review could be graded in accordance with the sensitivity of the facility.

*NRC Response to Comment Category 16*

The NRC disagrees that proliferation assessments should be required for all fuel cycle facilities. Existing NRC requirements address proliferation risks and concerns at all fuel cycle facilities. As discussed in response to petition Assertion 2, the existing NRC licensing framework is adequate to address proliferation concerns associated with nuclear fuel cycle facilities by including requirements to prevent the unauthorized disclosure of classified matter and sensitive technologies, and provide physical protection of nuclear equipment and materials. As for the suggestion that NRC staff grade its reviews based on the sensitivity of the facility, the NRC staff currently performs risk-informed reviews of license applications based on the risks associated with the types, physical and chemical forms, and quantities of materials to be possessed and used at the facility.

*Comment Category 17: Policy-related issues.*

Nine comment letters included statements related to policy issues. Seven commenters supported the petition, and two commenters opposed the petition.

One comment letter questioned whether laser technology could increase the risk of plutonium production. The commenter questioned whether the SILEX technology, which is used to separate silicon and zirconium from other materials, could be adjusted to purify other kinds of materials such as SNM. The commenter further asserted that in the mid-1980s, the DOE pursued a Special Isotope Separation facility to separate plutonium 239 from other isotopes of plutonium. Pursuit of the technology (and the associated EIS process) was canceled, but it is unknown if the current laser technology could be adapted for the purification of plutonium.

One commenter supporting the petition stated that the NRC would be wrong to presume that it need not ''pick sides'' in this debate simply because SILEX will not be exported. The commenter went on to explain that in 1976, the United States deferred the commercial, domestic use of plutonium-based fuels because of the potential adverse proliferation implications of proceeding. Given this precedent, and the distinct possibility that the negative proliferation implications SILEX's domestic deployment today might equal or exceed those associated with plutonium-based fuels in 1976, the commenter stated that it would only be prudent for the NRC to secure and formally evaluate the views of those primarily responsible for providing for the nation's security. Similarly, another commenter stated the United States has previously abandoned a civil nuclear effort (reprocessing and recycling of plutonium) in order to combat proliferation and that, in this spirit, the NRC should make a rigorous and distinct proliferation assessment a new part of the licensing criteria.

One commenter opposing the petition stated that the petitioner has not made an adequate case for NRC consideration. The commenter stated that the petition confuses technical and licensing issues within the scope of the NRC's licensing processes with broader aspects of the U.S. Government's nuclear nonproliferation policy, which is outside the scope of the NRC's regulatory jurisdiction. The commenter stated that such policy involves a wide range of agencies within the U.S. Government, not just the NRC, and that the petitioner fails to acknowledge these substantial efforts.

Another commenter opposing the petition stated that Section 123 of the AEA requires that the DOS conduct an NPAS in developing agreements with other nations for peaceful nuclear activities. These Section 123 agreements reflect the views and recommendations of the Secretary of Energy and the NRC. Further, these NPASs are prepared in consultation with the Director of Central Intelligence in order to address relevant classified information. These assessments also: (1) Analyze whether a proposed Section 123 agreement is consistent with the criteria set forth in the Act, (2) address the adequacy of safeguards and other control mechanisms, and (3) include peaceful use assurances.

*NRC Response to Comment Category 17*

Regarding the comment that the SILEX technology is used to separate silicon and zirconium, SILEX Ltd uses a laser process to separate silicon and zirconium isotopes. This technology is different from the technology used for uranium isotope separation. The statement that laser technology could be adjusted to purify other kinds of materials such as SNM is speculative. The NRC is not aware of and the commenter has not provided any information to support the assertion that laser technology could be adopted for the purification of, for example, plutonium. However, if new technologies present proliferation risks or threats not currently addressed by the NRC's comprehensive licensing framework, the NRC would take appropriate actions, consistent with its statutory authority to protect public health and safety and common defense and security, to address those risks or threats.

The NRC disagrees that the NRC needs to ''pick sides'' in the debate over SILEX and that the NRC should require a nuclear proliferation assessment in the spirit of the U.S. abandonment of reprocessing. As discussed in response to petition Assertion 6, the NRC is an independent regulatory agency; the NRC does not encourage or discourage the development of any particular technology. Such national policy decisions are appropriately made by the President and Congress. For example, in 1976, it was President Carter, not the NRC, who established as a matter of

policy that the United States would not engage in nuclear fuel reprocessing because of concerns about nuclear proliferation.

The NRC agrees that the petition mixes technical and licensing issues that are within the scope of the NRC's domestic licensing process with broader aspects of the U.S. Government's nuclear nonproliferation policy. While the NRC's comprehensive licensing framework is adequate to address proliferation concerns in domestic licensing, other Executive Branch agencies have the primary responsibility to address broader U.S. Government foreign policy initiatives and proliferation impacts outside of the NRC's domestic licensing activities.

As discussed in response to petition Assertion 1, the NRC agrees that the NPAS required under Section 123 of the AEA is required in the context of a bilateral agreement negotiated between the United States and another nation governing the peaceful use of nuclear energy. The NPAS does not address the domestic licensing actions of the NRC.

*Comment Category 18: Requiring a proliferation assessment would be feasible and would not be overly burdensome nor significantly impact licensing timelines.*

Two comment letters supporting the petition included comments in this category. One commenter stated that a nuclear proliferation assessment is feasible and should not be perceived as overly burdensome to the licensing process. A commenter stated that GLE carried out its own proliferation assessment of the proposed SILEX laser enrichment facility without creating delays or jeopardizing classified or proprietary information. Another commenter stated that it is highly doubtful that the addition of a proliferation assessment requirement would significantly alter licensees' timelines.

*NRC Response to Comment Category 18*

The NRC has determined that preparation of a nuclear proliferation assessment is not necessary because it would not provide meaningful information beyond that which is already available to the NRC when conducting a domestic licensing proceeding. This determination was made independent of the time and resources involved in preparing such an assessment. This determination was also made by reviewing the petition, the public comments, the information sources available to the NRC related to the current threat environment, the existing comprehensive licensing framework, the division of responsibilities between Federal agencies, and the NRC's extensive experience dealing with domestic and international nuclear safety security matters through established communications channels. Based on this review, the NRC has determined that its existing licensing framework is adequate to address proliferation concerns. Requiring a separate license-by-license nuclear proliferation assessment would not enhance the NRC's ability to carry out its statutory responsibility to protect the public health and safety and promote the common defense and security.

*Comment Category 19: The Nuclear Threat Initiative (NTI).*

Two comment letters included comments in this category. Both commenters stated their support for the efforts of the NTI (also supported by former Senators Richard Lugar and Sam Nunn), which supports the worldwide safeguarding of all fissile materials that could be used to do harm to our Nation.

*NRC Response to Comment Category 19*

Comments advocating support for the NTI are outside the scope of this petition because they are unrelated to the petitioner's request that the NRC require its ENR facility license applicants to perform a nuclear proliferation assessment. Nonetheless, the NRC notes that its comprehensive licensing framework requires the safeguarding of fissile material in domestic licensing activities.

**V. Determination of Petition**

The NRC has reviewed the petition and the public comments. For the reasons set forth in this document, the NRC is denying the petition under 10 CFR 2.803. The NRC disagrees that an applicant seeking an ENR facility license should be required to conduct a nuclear proliferation assessment. The petitioner has not shown that the NRC's comprehensive licensing framework fails to adequately address proliferation risks associated with the licensing of an ENR facility. Additionally, the petitioner has not shown that ENR applicants have a particular insight on proliferation issues or have access to the intelligence resources, capabilities and information that would enable them to prepare a meaningful proliferation assessment that would assist the NRC in making an informed licensing decision. Furthermore, proliferation risks have and will continue to be assessed and addressed by the responsible agencies within the Executive Branch. The NRC will continue to engage with and support the Executive Branch agencies with primary responsibility for assessing proliferation risks, and will continue to address proliferation risks in the NRC's comprehensive regulations for physical security, information security, material control and accounting, cyber security, and export control.

Dated at Rockville, Maryland, this 31st day of May 2013.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2013–13444 Filed 6–5–13; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

### 31 CFR Part 1010

**RIN 1506–AB23**

### Imposition of Special Measure Against Liberty Reserve S.A. as a Financial Institution of Primary Money Laundering Concern

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In a finding, notice of which was published elsewhere in this issue of the **Federal Register** (Notice of Finding), the Director of FinCEN found that Liberty Reserve S.A. (Liberty Reserve) is a financial institution operating outside of the United States that is of primary money laundering concern. FinCEN is issuing this notice of proposed rulemaking (NPRM) to propose the imposition of a special measure against Liberty Reserve.

**DATES:** Written comments on this NPRM must be submitted on or before August 5, 2013.

**ADDRESSES:** You may submit comments, identified by RIN 1506–AB23, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include RIN 1506–AB23 in the submission.
- *Mail:* The Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AB23 in the body of the text. Please submit comments by one method only.
- Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

*Inspection of comments:* Public comments received electronically or through the U.S. Postal Service sent in

response to a notice and request for comment will be made available for public review as soon as possible on *http://www.regulations.gov.* Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll-free call).

**FOR FURTHER INFORMATION CONTACT:** The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

**SUPPLEMENTARY INFORMATION:**

## I. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107–56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the Secretary) to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A, grants the Director of FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transaction, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and financial agencies to take certain ''special measures'' to address the primary money laundering concern.

## II. Imposition of Special Measure Against Liberty Reserve as a Financial Institution of Primary Money Laundering Concern

### *A. Special Measure*

As noticed elsewhere in this issue of the **Federal Register**, on May 28, 2013, the Director of FinCEN found that Liberty Reserve is a financial institution operating outside the United States that is of primary money laundering concern (Finding). Based upon that Finding, the Director of FinCEN is authorized to impose one or more special measures. Following the consideration of all factors relevant to the Finding and to selecting the special measure proposed in this NPRM, the Director of FinCEN proposes to impose the special measure authorized by section 5318A(b)(5) (the fifth special measure). In connection with this action, FinCEN consulted with representatives of the Federal functional regulators, the Department of Justice, and the Department of State, among others.

### *B. Discussion of Section 311 Factors*

In determining which special measures to implement to address the primary money laundering concern, FinCEN considered the following factors.

1. Whether Similar Action Has Been or Will Be Taken by Other Nations or Multilateral Groups Against Liberty Reserve

Other countries or multilateral groups have not yet taken action similar to those proposed in this rulemaking that would: (1) Prohibit domestic financial institutions and agencies from opening or maintaining a correspondent account for or on behalf of a foreign bank if such correspondent account is being used to process transactions involving Liberty Reserve; and (2) require those domestic financial institutions and agencies to screen their correspondents in a manner that is reasonably designed to guard against processing transactions involving Liberty Reserve. FinCEN encourages other countries to take similar action based on the information contained in this notice and the Finding.

2. Whether the Imposition of the Fifth Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

The fifth special measure proposed by this rulemaking would prohibit covered financial institutions from opening or maintaining correspondent accounts for or on behalf of a foreign bank if such correspondent account is being used to process transactions involving Liberty Reserve after the effective date of the final rule implementing the fifth special measure. U.S. financial institutions generally apply some level of screening and (when required) reporting of their transactions and accounts, often through the use of commercially-available software such as that used for compliance with the economic sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the Department of the Treasury and to detect potential suspicious activity. As explained in more detail in the section-by-section analysis below, financial institutions should be able to leverage these current screening and reporting procedures to detect transactions involving Liberty Reserve. As a corollary to this measure, covered financial institutions also would be required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used to provide services to Liberty Reserve. This would involve a minimal burden in transmitting a one-time notice to certain foreign correspondent account holders concerning the prohibition on processing transactions involving Liberty Reserve through the U.S. correspondent account, but otherwise is not expected to impose a significant additional burden upon U.S. financial institutions.

3. The Extent to Which the Proposed Action or Timing of the Action Would Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of Liberty Reserve

The requirements proposed in this NPRM would target Liberty Reserve specifically; they would not target a class of financial transactions (such as wire transfers) or a particular jurisdiction. Liberty Reserve is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Thus, the imposition of the fifth special measure against Liberty Reserve would not have a significant adverse systemic impact on the international payment, clearance, and settlement system. As discussed further in the Notice of Finding, there appears to be little or no incentive for legitimate use of Liberty Reserve, due to its structure, associated fees, and lack of basic protections for users.

4. The Effect of the Proposed Action on United States National Security and Foreign Policy

The exclusion of Liberty Reserve from the U.S. financial system as required by the fifth special measure would enhance national security by making it more difficult for money launderers, other criminals or terrorists to access the U.S. financial system. More generally, the imposition of the fifth special measure would complement the U.S. Government's worldwide efforts to

expose and disrupt international money laundering and terrorism financing.

Therefore, pursuant to the Finding that Liberty Reserve is a financial institution operating outside of the United States of primary money laundering concern, and after conducting the required consultations and weighing the relevant factors, the Director of FinCEN proposes to impose the fifth special measure.

**III. Section-by-Section Analysis for Imposition of the Fifth Special Measure**

*A. 1010.660(a)—Definitions*

1. Liberty Reserve

Section 1010.660(a)(1) of the proposed rule would define Liberty Reserve to include all branches, offices, and subsidiaries of Liberty Reserve S.A. operating in Costa Rica or in any other jurisdiction.

Covered financial institutions should take commercially reasonable measures to determine whether a customer is a branch, office, or subsidiary of Liberty Reserve.

2. Correspondent Account

Section 1010.660(a)(2) of the proposed rule would define the term ''correspondent account'' by reference to the definition contained in 31 CFR 1010.605(c)(1)(ii). Section 1010.605(c)(1)(ii) defines a correspondent account to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or to handle other financial transactions related to the foreign bank. Under this definition, ''payable through accounts'' are a type of correspondent account.

In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions, including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit. FinCEN is using the same definition of ''account'' for purposes of this rule as was established for depository institutions in the final rule implementing the provisions of section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[1]

In the case of securities broker-dealers, futures commission merchants, introducing brokers-commodities, and investment companies that are open-end companies (''mutual funds''), FinCEN is also using the same definition of ''account'' for purposes of this rule as was established for these entities in the final rule implementing the provisions of section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[2]

3. Covered Financial Institution

Section 1010.660(a)(3) of the proposed rule would define ''covered financial institution'' with the same definition used in the final rule implementing the provisions of section 312 of the USA PATRIOT Act,[3] which in general includes the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- a commercial bank;
- an agency or branch of a foreign bank in the United States;
- a Federally insured credit union;
- a savings association;
- a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611);
- a trust bank or trust company;
- a broker or dealer in securities;
- a futures commission merchant or an introducing broker-commodities; and
- a mutual fund.

4. Subsidiary

Section 1010.660(a)(4) of the proposed rule would define ''subsidiary'' as a company of which more than 50 percent of the voting stock or analogous equity interest is owned by Liberty Reserve.

*B. 1010.660(b)—Prohibition on Accounts and Due Diligence Requirements for Covered Financial Institutions*

1. Prohibition on Use of Correspondent Accounts

Section 1010.660(b)(1) of the proposed rule imposing the fifth special measure would prohibit covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent account for or on behalf of a foreign bank if such correspondent account is being used to process transactions involving Liberty Reserve, including any of its branches, offices or subsidiaries.

2. Special Due Diligence for Correspondent Accounts to Prohibit Use

As a corollary to the prohibition on maintaining correspondent accounts that are being used to process transactions involving Liberty Reserve, section 1010.660(b)(2) of the proposed rule would require a covered financial institution to apply special due diligence to all of its foreign correspondent accounts that is reasonably designed to guard against processing transactions involving Liberty Reserve. That special due diligence must include notifying those foreign correspondent account holders that the covered financial institution knows or has reason to know provide services to Liberty Reserve that such correspondents may not provide Liberty Reserve with access to the correspondent account maintained at the covered financial institution and implementing appropriate risk-based procedures to identify transactions involving Liberty Reserve.

A covered financial institution may satisfy the notification requirement by transmitting the following notice to its foreign correspondent account holders that it knows or has reason to know provide services to Liberty Reserve:

> Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, *see* 31 CFR 1010.660, we are prohibited from establishing, maintaining, administering, or managing a correspondent account for or on behalf of a foreign bank if such correspondent account processes any transaction involving Liberty Reserve or any of its subsidiaries. The regulations also require us to notify you that you may not provide Liberty Reserve or any of its subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that the correspondent account you hold at our financial institution has processed any transactions involving Liberty Reserve or any of its subsidiaries, we will be required to take appropriate steps to prevent such access, including terminating your account.

A covered financial institution may, for example, have knowledge through transaction screening software that the correspondents process transactions for Liberty Reserve. The purpose of the notice requirement is to aid cooperation with correspondent account holders in preventing transactions involving Liberty Reserve from accessing the U.S. financial system. However, FinCEN would not require or expect a covered financial institution to obtain a certification from any of its correspondent account holders that access will not be provided to comply with this notice requirement. Methods of compliance with the notice

[1] *See* 31 CFR 1010.605(c)(2)(i).

[2] *See* 31 CFR 1010.605(c)(2)(ii)–(iv).

[3] *See* 31 CFR 1010.605(e)(1).

requirement could include, for example, transmitting a one-time notice by mail, fax, or email. FinCEN specifically solicits comments on the form and scope of the notice that would be required under the rule.

The special due diligence would also include implementing risk-based procedures designed to identify any use of correspondent accounts to process transactions involving Liberty Reserve. A covered financial institution would be expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face listed Liberty Reserve as the financial institution of the originator or beneficiary, or otherwise referenced Liberty Reserve in a manner detectable under the financial institution's normal screening mechanisms. Transactions involving Liberty Reserve typically indicate such involvement by the presence of the ''LR'' abbreviation and Liberty Reserve account number. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by OFAC.

A covered financial institution would also be required to implement risk-based procedures to identify disguised use of its correspondent accounts, including through methods used to hide the beneficial owner of a transaction. Specifically, FinCEN is concerned that Liberty Reserve may attempt to disguise its transactions by relying on types of payments and accounts that would not explicitly identify Liberty Reserve as an involved party. A financial institution may develop a suspicion of such misuse based on other information in its possession, patterns of transactions, or any other method available to it based on its existing systems. Under the proposed rule, a covered financial institution that suspects or has reason to suspect use of a correspondent account to process transactions involving Liberty Reserve must take all appropriate steps to attempt to verify and prevent such use, including a notification to its correspondent account holder per section 1010.660(b)(2)(i)(A) requesting further information regarding a transaction, requesting corrective action to address the perceived risk and, where necessary, terminating the correspondent account. A covered financial institution may re-establish an account closed under the rule if it determines that the account will not be used to process transactions involving Liberty Reserve. FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions take reasonable steps to prevent any processing of transactions involving Liberty Reserve.

3. Recordkeeping and Reporting

Section 1010.660(b)(3) of the proposed rule would clarify that subsection (b) of the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the requirement that it notify those correspondent account holders that the covered financial institution knows or has reason to know provide services to Liberty Reserve that such correspondents may not process any transaction involving Liberty Reserve through the correspondent account maintained at the covered financial institution.

## IV. Request for Comments

FinCEN invites comments on all aspects of the proposal to impose the fifth special measure against Liberty Reserve and specifically invites comments on the following matters:

1. The impact of the proposed special measure upon legitimate transactions utilizing Liberty Reserve involving, in particular, U.S. persons and entities; foreign persons, entities, and governments; and multilateral organizations doing legitimate business.

2. The form and scope of the notice to certain correspondent account holders that would be required under the rule;

3. The appropriate scope of the proposed requirement for a covered financial institution to take reasonable steps to identify any use of its correspondent accounts to process transactions involving Liberty Reserve; and

4. The appropriate steps a covered financial institution should take once it identifies use of one of its correspondent accounts to process transactions involving Liberty Reserve.

## V. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

### *A. Proposal To Prohibit Covered Financial Institutions From Opening or Maintaining Correspondent Accounts With Certain Foreign Banks Under the Fifth Special Measure*

1. Estimate of the Number of Small Entities To Whom the Proposed Fifth Special Measure Will Apply:

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $175,000,000 in assets.[4] Of the estimated 8,000 banks, 80 percent have less than $175,000,000 in assets and are considered small entities.[5] Of the estimated 7,000 credit unions, 90 percent have less than $175,000,000 in assets.[6]

Broker-dealers are defined in 31 CFR 1010.100(h) as those broker-dealers required to register with the Securities and Exchange Commission (SEC). Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the Small Business Administration (SBA). The SEC has defined the term ''small entity'' to mean a broker or dealer that: ''(1) had total capital (net worth plus subordinated liabilities of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements, were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release.'' [7] Currently, based on SEC estimates, 18 percent of broker-dealers are classified as ''small'' entities for purposes of the RFA.[8]

[4] *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* Small Business Administration Size Standards at 27 (SBA Oct. 1, 2012) [hereinafter *SBA Size Standards*].

[5] Federal Deposit Insurance Corporation, *Find an Institution, http://www2.fdic.gov/idasp/main.asp; select* Size or Performance: Total Assets, *type* Equal or less than $: ''175000'', *select* Find.

[6] National Credit Union Administration, *Credit Union Data, http://webapps.ncua.gov/customquery/; select* Search Fields: Total Assets, *select* Operator: Less than or equal to, *type* Field Values: ''175000000'', *select* Go.

[7] 17 CFR 240.0–10(c).

[8] 76 FR 37572, 37602 (June 27, 2011) (The SEC estimates 871 small broker-dealers of the 5,063 total registered broker-dealers).

Futures commission merchants (FCMs) are defined in 31 CFR 1010.100(x) as those FCMs that are registered or required to be registered as a FCM with the Commodity Futures Trading Commission (CFTC) under the Commodity Exchange Act (CEA), except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2). Because FinCEN and the CFTC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the CFTC's definition of small business as previously submitted to the SBA. In the CFTC's ''Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act,'' the CFTC concluded that registered FCMs should not be considered to be small entities for purposes of the RFA.[9] The CFTC's determination in this regard was based, in part, upon the obligation of registered FCMs to meet the capital requirements established by the CFTC.

For purposes of the RFA, an introducing broker-commodities is considered small if it has less than $7,000,000 in gross receipts annually.[10] Based on information provided by the National Futures Association (NFA), there were 1249 introducing brokers-commodities that were members of NFA as of April 30, 2013, 95 percent of which have less than $7 million in Adjusted Net Capital and are considered to be small entities.

Mutual funds are defined in 31 CFR 1010.100(gg) as those investment companies that are open-end investment companies that are registered or are required to register with the SEC. Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the SBA. The SEC has defined the term ''small entity'' under the Investment Company Act to mean ''an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[11] Currently, based on SEC estimates, 7 percent of mutual funds are classified as ''small entities'' for purposes of the RFA under their definition.[12]

As noted above, 80 percent of banks, 90 percent of credit unions, 18 percent of broker-dealers, 95 percent of introducing brokers-commodities, zero FCMs, and 7 percent of mutual funds are small entities. The limited number of foreign banking institutions with which Liberty Reserve maintains or will maintain accounts will likely limit the number of affected covered financial institutions to the largest U.S. banks, which actively engage in international transactions. Thus, the prohibition on maintaining correspondent accounts for foreign banking institutions that engage in transactions involving Liberty Reserve under the fifth special measure would not impact a substantial number of small entities.

2. Description of the Projected Reporting and Recordkeeping Requirements of the Fifth Special Measure:

The proposed fifth special measure would require covered financial institutions to provide a notification intended to aid cooperation from foreign correspondent account holders in preventing transactions involving Liberty Reserve from accessing the U.S. financial system. FinCEN estimates that the burden on institutions providing this notice is one hour. Covered financial institutions would also be required to take reasonable measures to detect use of their correspondent accounts to directly or indirectly process transactions involving Liberty Reserve. All U.S. persons, including U.S. financial institutions, currently must exercise some degree of due diligence to comply with OFAC sanctions and suspicious activity reporting requirements. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by OFAC, can easily be modified to identify correspondent accounts with foreign banks that involve Liberty Reserve. Thus, the special due diligence that would be required by the imposition of the fifth special measure—*i.e.,* the one-time transmittal of notice to certain correspondent account holders, the screening of transactions to identify any use of correspondent accounts, and the implementation of risk-based measures to detect use of correspondent accounts—would not impose a significant additional economic burden upon small U.S. financial institutions.

*B. Certification*

When viewed as a whole, FinCEN does not anticipate that the proposals contained in this rulemaking would have a significant impact on a substantial number of small businesses. Accordingly, FinCEN certifies that this rule would not have a significant economic impact on a substantial number of small entities.

FinCEN invites comments from members of the public who believe there would be a significant economic impact on small entities from the imposition of the fifth special measure regarding Liberty Reserve.

**VI. Paperwork Reduction Act**

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by email to *oira_submission@omb.eop.gov*) with a copy to FinCEN by mail or email at the addresses previously specified. Comments should be submitted by one method only. Comments on the collection of information should be received by August 5, 2013. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 1010.659 is presented to assist those persons wishing to comment on the information collection.

*A. Proposed Information Collection Under the Fifth Special Measure*

The notification requirement in section 1010.660(b)(2)(i) is intended to aid cooperation from correspondent account holders in denying Liberty Reserve access to the U.S. financial system. The information required to be maintained by section 1010.660(b)(3)(i) would be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 1010.660. The collection of information would be mandatory.

*Description of Affected Financial Institutions:* Banks, broker-dealers in securities, futures commission merchants and introducing brokers-commodities, and mutual funds.

*Estimated Number of Affected Financial Institutions:* 5,000.

*Estimated Average Annual Burden in Hours Per Affected Financial Institution:* The estimated average burden associated with the collection of information in this proposed rule is one hour per affected financial institution.

[9] 47 FR 18618, 18619 (Apr. 30, 1982).

[10] SBA Size Standards at 28.

[11] 17 CFR 270.0–10.

[12] 78 FR 23637, 23658 (April 19, 2013) (The SEC estimates 119 small mutual funds of the 1692 total active registered mutual funds).

*Estimated Total Annual Burden:* 5,000 hours.

FinCEN specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information would have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

**VII. Executive Order 12866**

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that the proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

**List of Subjects in 31 CFR Chapter X**

Administrative practice and procedure, banks and banking, brokers, counter-money laundering, counter-terrorism, foreign banking.

**Authority and Issuance**

For the reasons set forth in the preamble, Chapter X of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

## CHAPTER X—FINANCIAL CRIMES ENFORCEMENT NETWORK, DEPARTMENT OF THE TREASURY

## PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for Part 1010 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332 Title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. Amend Part 1010 by adding § 1010.660 of Subpart F to read as follows:

**§ 1010.660 Special measures against Liberty Reserve**

(a) *Definitions.* For purposes of this section:

(1) *Liberty Reserve* means all branches, offices, and subsidiaries of Liberty Reserve operating in any jurisdiction.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) *Covered financial institution* has the same meaning as provided in § 1010.605(e)(1).

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Prohibition on accounts and due diligence requirements for covered financial institutions*

(1) *Prohibition on use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a foreign bank if such correspondent account is being used to process transactions that involve Liberty Reserve.

(2) *Special due diligence of correspondent accounts to prohibit use.*

(i) A covered financial institution shall apply special due diligence to its foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Liberty Reserve. At a minimum, that special due diligence must include:

(A) Notifying those foreign correspondent account holders that the covered financial institution knows or has reason to know provide services to Liberty Reserve that such correspondents may not provide Liberty Reserve with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its foreign correspondent accounts by Liberty Reserve, to the extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its foreign correspondent accounts to process transactions involving Liberty Reserve.

(iii) A covered financial institution that obtains knowledge that a foreign correspondent account may be being used to process transactions involving Liberty Reserve shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(2)(i)(A) and, where necessary, termination of the correspondent account.

(3) *Recordkeeping and reporting.*

(i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in paragraph (b) shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: May 28, 2013.

**Jennifer Shasky Calvery,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 2013–12945 Filed 6–5–13; 8:45 am]

**BILLING CODE 4810–02–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2012–0955; FRL–9819–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia; Removal of Obsolete Regulations and Updates to Citations to State Regulations Due to Recodification

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to remove over fifty rules in the Code of Federal Regulations (CFR) at 40 CFR part 52 for Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia because they are unnecessary or obsolete. EPA is also proposing to clarify regulations in 40 CFR part 52 which reflect updated citations of certain Commonwealth of Virginia rules due to the Commonwealth's recodification of its regulations at the state level. These proposed actions make no substantive changes to these State Implementation Plans (SIPs) and impose no new requirements. In the Final Rules section of this **Federal Register**, EPA is

approving these determinations as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by July 8, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0955 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: frankford.harold@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0955, Harold A. Frankford, Mailcode 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2012–0955. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814–2018, or by email at *frankford.harold@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: May 16, 2013.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2013–13351 Filed 6–5–13; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 67

**[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1178]**

## Proposed Flood Elevation Determinations for Bolivar County, Mississippi and Incorporated Areas

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule concerning proposed flood elevation determinations for Bolivar County, Mississippi and Incorporated Areas.

**DATES:** This withdrawal is effective on June 6, 2013.

**ADDRESSES:** You may submit comments, identified by Docket No. FEMA–B–1178, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** On February 16, 2011 and on August 7, 2012, FEMA published a proposed rulemaking at 76 FR 8965 and 77 FR 46994, respectively, proposing flood elevation determinations along one or more flooding sources in Bolivar County, Mississippi. Because FEMA has or will be issuing a Revised Preliminary Flood Insurance Rate Map, and if necessary a Flood Insurance Study report, featuring updated flood hazard information, the proposed rulemaking is being withdrawn. A Notice of Proposed Flood Hazard Determinations will be published in the **Federal Register** and in the affected community's local newspaper.

**Authority:** 42 U.S.C. 4104; 44 CFR 67.4.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2013–13375 Filed 6–5–13; 8:45 am]

**BILLING CODE 9110–12–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 2, 20, 22, 24, 27, 90 and 95

**[WT Docket No. 10–4; Report No. 2979]**

### Petition for Reconsideration of Action in Rulemaking Proceeding

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for reconsideration.

**SUMMARY:** In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding by Russell D. Lukas on behalf of Wilson Electronics, LLC, Sean Haynberg on behalf of V–COMM, LLC, and by Mark L. Crosby on behalf of the Enterprise Wireless Alliance.

**DATES:** Oppositions to the Petition must be filed on or before June 21, 2013. Replies to an opposition must be filed on or before July 1, 2013.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Joyce Jones, Mobility Division, Wireless Telecommunications Bureau, (202) 418–1327, TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, Report No. 2979, released May 20, 2013. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this document pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this document does not have an impact on any rules of particular applicability.

*Subject:* Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission's Rules to Improve Wireless Coverage Through the Use of Signal Boosters, document FCC 13–21, published at 78 FR 21555, April 11, 2013, in WT Docket No. 10–4, and published pursuant to 47 CFR 1.429(e). *See also* section 1.4(b)(1) of the Commission's rules.

*Number of Petitions Filed:* 3.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–13350 Filed 6–5–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 52

**[WC Docket No. 07–244; CC Docket No. 95–116; DA 13–1178]**

### Requests for Clarification of Use of Passcodes for Non-Simple Ports and Local Number Portability Provisioning Flows; Telephone Number Portability

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; comments requested.

**SUMMARY:** In this document, the Commission seeks comment on a submission by the North American Numbering Council (NANC) asking the Commission to clarify that the Local Number Portability (LNP) flows and recommendations adopted by the Commission in its LNP Standard Fields Order apply to all ports, not just simple ports, thereby prohibiting the use of a carrier-initiated passcode for any porting request. The Commission also seeks comment on a submission by the NANC asking the Commission to adopt clarifying revisions to LNP provisioning flows for cancellations and disconnections.

**DATES:** Comments must be filed on or before June 5, 2013.

**ADDRESSES:** Interested parties may submit comments, identified by WC Docket No. 07–244 and CC Docket No. 95–116, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Email: ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Include the docket number(s) in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street SW., Washington DC 20554.
- *Hand Delivery/Courier:* FCC Headquarters building located at 445 12th Street SW., Room TW–A325, Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

All submissions received must include the agency name and WC Docket No. 07–244 and CC Docket No. 95–116. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs.* For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Jackson, *kimberly.jackson@fcc.gov* or Melissa Kirkel, *melissa.kirkel@fcc.gov,* of the Competition Policy Division, Wireline Competition Bureau, at (202) 418–1580.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Public Notice, DA 13–1178, released May 22, 2013. The full text of this document is available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, email *fcc@bcpiweb.com.*

In 2010, the Commission adopted LNP provisioning flows, which include a one-business day porting interval for simple ports of a subscriber's telephone number from one provider to another. In adopting these process flows, the Commission indicated that carrier-assigned passcodes for a customer's account may not be required to be supplied by a new provider in order to obtain a customer service record from another provider. The Commission also clarified that the adopted porting flows would remain in effect until the NANC recommends, and the commission approves, revised provisioning flows for the porting process. On September 19, 2012, the NANC asked the Commission to clarify that the LNP flows and recommendations adopted by the Commission in its LNP Standard Fields Order apply to all ports, not just simple ports, thereby prohibiting the use of a carrier-initiated passcode for any porting request. On December 10, 2012, the NANC asked the Commission to adopt clarifying revisions to LNP

provisioning flows for cancellations and disconnections. The Commission seeks comment on these NANC submissions.

**Initial Paperwork Reduction Act of 1995 Analysis**

This document seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the date indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet to access the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

**Lisa Gelb,**

*Deputy Chief, Wireline Competition Bureau.*

[FR Doc. 2013–13409 Filed 6–5–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket No. 10–90; DA 13–1112]**

## Wireline Competition Bureau Seeks Comment on Options To Promote Rural Broadband in Rate-Of-Return Areas

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Wireline Competition Bureau seeks comment on options to promote the availability of modern voice and broadband-capable networks in rural areas served by rate-of-return carriers. In particular, the Bureau seeks comment on two possible frameworks that could provide rate-of-return carriers with additional incentives to efficiently advance broadband deployment.

**DATES:** Comments are due on or before June 17, 2013 and reply comments are due on or before July 15, 2013.

**ADDRESSES:** Interested parties may file comments on or before June 17, 2013 and reply comments on or before July 15, 2013. All pleadings are to reference WC Docket No. 10–90. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies, by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Ted Burmeister, Wireline Competition Bureau at (202) 418–7389 or TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Wireline Competition Bureau's Public Notice (Notice) in WC Docket No. 10–90; DA 13–1112, released May 16, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via Internet at *http://www.bcpiweb.com*.

1. By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment on options to promote the availability of modern voice and broadband-capable networks in rural areas served by rate-of-return carriers. In particular, we seek comment on two possible frameworks that could provide rate-of-return carriers with additional incentives to efficiently advance broadband deployment. First, rate-of-return carriers have urged the Commission to take steps to make universal service fund support available to support broadband lines even where their consumers choose not to purchase voice telephony service. To that end, we seek additional targeted comment on several aspects of a proposal made by the rural carrier associations regarding changes to the existing framework set forth in the Commission's rules to make support available for network infrastructure that provides standalone broadband service. Second, we seek comment on facilitating rate-of-return carriers' voluntary participation in Connect America Phase II. Connect America Phase II will feature clearly defined support amounts for a defined period of time along with specific service deployment obligations. Certain rate-of-return carriers may find advantages to participating in Connect America Phase II and seek to opt in to this support mechanism. Recognizing that rate of return carriers already have the option of voluntary conversion to price cap regulation, we seek comment what steps we could take to facilitate such conversions and other issues related to the provision of Connect America Fund Phase II support to rate-of-return carriers.

*A. Rural Association Proposal for Standalone Broadband Lines*

2. The rural carrier associations have advocated for a ''Connect America Fund that supports broadband-capable networks that enable advanced communications and enhanced consumer choice in all rural areas.'' Of course, as the rural carrier associations have acknowledged in other contexts, existing universal service support for rate-of-return carriers supports such networks, and indeed, under the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, carriers are required to deploy broadband-capable infrastructure as a condition of receiving such support. The rural carrier associations have noted that ''[t]he *Order* adopts a number of broadband-related public interest obligations for ETCs, including RLECs[,] . . . [including a] requirement[] that RLECs offer broadband services meeting minimum speed and latency requirements upon 'reasonable request'.'' The rural carrier associations suggest that the Commission should provide high-cost support for standalone broadband loops provided by rate-of-return carriers to further advance this goal.

3. Today, a rate-of-return carrier may provide broadband transmission in one of two ways: over a loop that provides both voice and broadband, or over a standalone broadband transmission loop. However, universal service support—in the form of High-Cost Loop Support (''HCLS'') and Interstate Common Line Support (''ICLS'')—is available for a broadband-capable loop provided by a rate-of-return carrier only if the end user customer purchases voice service. When the loop is used to deliver both voice and broadband transmission services on a Title II basis, the loop is considered a ''joint use'' loop. Under current Commission rules, the costs of that loop are considered regulated costs, with most of those costs allocated to the intrastate jurisdiction. HCLS and ICLS provide support for interstate and intrastate loop costs. The costs of a loop are only recovered once under the Commission's cost allocation and pricing procedures. Loop costs associated with joint-use facilities are allocated between the state and federal jurisdictions on a 75/25 percent basis. These joint-use loops may receive HCLS and ICLS. The costs of these joint-use facilities, therefore, are recovered through a combination of intrastate end user charges for voice service, interstate charges (such as the subscriber line charge) and universal service support. Typically, the only costs recovered through the special access tariff for the broadband transmission service are the incremental costs associated with making the loop broadband-capable. In contrast, if the loop only is used to deliver Title II broadband transmission service, and not voice, all of the costs associated with that loop are jurisdictionally interstate and are allocated to special access, and the underlying broadband transmission is tariffed as special access. Broadly speaking, 100 percent of line costs associated with special access services are directly assigned to either the interstate or intrastate jurisdiction, dependent on the jurisdictional usage of the line. Special access costs (loop and other incremental costs) are recovered in the appropriate jurisdiction through tariffed rates for the involved services without the benefit of any universal service support. *See generally* 47 CFR parts 36 and 69. There is no universal service support mechanism for costs associated with special access provided by rate-of-return carriers. The rural carrier associations contend this lack of support for standalone broadband transmission service in high cost areas contributes to a significant variance in the rates consumers pay for broadband bundled with voice service compared to standalone broadband.

4. The Commission originally sought comment on this proposal in the *USF/ICC Transformation Order FNPRM,* 76 FR 73830, November 29, 2011 and 76 FR 78384, December 16, 2011, where it inquired about the legal and policy implications to providing USF support for lines where the end user customer does not subscribe to voice service from the eligible telecommunications carrier (ETC), including the monetary impact on the Connect America Fund if the Commission were to provide support for standalone broadband provided by rate-of-return carriers. The Commission also inquired about what rule changes would help provide appropriate incentives for investment in broadband-capable networks, while limiting unrestrained growth in support provided to rate-of-return carriers.

5. Since that time, the rural associations have made additional filings regarding this matter, arguing, among other things, that providing support for standalone broadband would promote broadband adoption and competition in voice services. First, the rural associations suggest that the Commission should ''consider technical fixes to its rules that would permit loop costs to remain in the Common Line pool (and thus eligible for USF cost recovery) even where a consumer declines to take an offer of voice telephony and instead elects only to take broadband service from an RLEC.'' The rural associations argue that ''[s]uch simple part 69 rule changes are needed to fulfill the express and plainly stated intent of the Commission's reform order,

and . . . allow consumers in rural areas to have the same choices as those in urban areas with respect to their communications services.'' What specific part 69 rule changes would be required? Are any other rule changes necessary? What is the near-term impact to the HCLS and ICLS mechanisms? Would making these modifications to the Commission's rules change the HCLS allocation among carriers? Would such changes increase ICLS support?

6. We also invite interested parties to comment on several issues related to establishing separate loop categories to account for joint-use lines and standalone broadband lines. First, we invite parties to comment on whether there are definitional issues relating to Part 69 implementation that would need to be addressed to define rate elements necessary to offer standalone broadband service. Parties should address whether a loop element and a port element structure similar to the structure currently used for joint-use loops should be used and, if so, how different speeds should be handled within the rate structure. For example, can speed differences be addressed through a circuit equipment/port charge while having a line rate that is uniform for all speeds? Parties should also address whether the Commission should create classes of standalone broadband, with the costs of certain standalone broadband transmission services remaining in the Common Line pool, while the costs associated with other broadband transmission services would not. If the Commission were to do so, how should it define the characteristics of the different classes? For example, should the Commission maintain a class of special access broadband transmission? As noted above, standalone broadband service is currently in the special access category. And, carriers have had significant flexibility in establishing special access rates. The pricing principles for the new loop Common Line service must be clear to avoid potential misuse, such as supporting special access services. We invite parties to comment on the need for cost allocation procedures to be used to establish the price of a standalone broadband loop offering. Commenters should address procedures for allocating direct, indirect, and overhead costs. Commenters should also discuss any revisions to the Commission's rules required to implement any cost allocation procedures.

7. Second, the rural associations suggest that ''[w]hile some of these issues require further analysis'' a standalone broadband funding mechanism is ultimately necessary to ''ensure that broadband is available at affordable, reasonably comparable rates for consumers in high-cost areas.'' We seek comment on how such a mechanism would impact providers' investment plans and service offerings, as well as consumer choices and rates. We invite commenters to provide data on the specific percentages of residential end users that currently purchase retail broadband Internet access without landline service in rural areas served by rate-of-return carriers and in rural areas served by price cap carriers. We also invite comment on how a standalone broadband funding mechanism could be structured. If implemented, how would a transition to such a mechanism work, and would there be an impact on the total amount of support received by rate-of-return carriers? How would such a mechanism be implemented within the overall high-cost Connect America Fund framework, which established a budget of ''up to $2 billion'' annually for rate-of-return territories, including intercarrier compensation recovery? Would it make sense to limit support provided through such a mechanism, or to adopt such a mechanism in conjunction with overall limits on support?

*B. Voluntary Election of Connect America Phase II Model-Based Support*

8. Facilitating a path for carriers to opt in to Connect America Phase II, including through the existing process to convert to price cap regulation, is consistent with the Commission's longstanding goal of providing support to all carriers through incentive-based mechanisms. We seek comment on whether creating a more explicit voluntary pathway to model-based support would be an additional way to promote efficient new broadband deployment in rural rate-of-return areas.

9. In the *USF/ICC Transformation Order,* the Commission adopted the framework for the Connect America Fund Phase II, which will provide support in areas served by price cap carriers. While price cap conversion is generally available to carriers, the Commission did not specifically address the circumstance in which a rate-of-return carrier that is not affiliated with a price cap holding company would seek to participate in Connect America Phase II. The Commission decided that Phase II support should be based on the forward-looking costs of deploying voice and broadband-capable networks in high-cost areas, with support calculated at a granular area. The Commission delegated to the Bureau the authority to develop a model and establish support thresholds. Based on the support amounts derived from the model, the Commission will offer each price cap carrier, and any rate-of-return LEC affiliates of a price cap carrier, annual support for the five-year period in exchange for a commitment to offer a specified level of service within that service territory. For all territories for which price cap LECs decline to make that commitment, the Commission will award ongoing support through a competitive bidding mechanism. At the end of the five-year Connect America Fund Phase II period, the Commission expects to distribute all Connect America Fund support in price cap areas pursuant to a market-based mechanism.

10. In adopting the framework for the Connect America Fund Phase II, the Commission did not explicitly address how this model might be applied to determine support amounts in non-price cap territories. We now seek to further develop the record on how Connect America Fund Phase II could be provided in areas that currently are served by rate-of-return carriers to provide additional incentives for deployment of broadband-capable networks.

11. We invite parties to comment on the advantages and disadvantages of this pathway, both from the perspective of potential recipients of support and for achievement of the Commission's overall goals for reform. In particular, parties should address the extent to which rate-of-return carriers would find it beneficial to receive Phase II support rather than the support provided by the current HCLS and ICLS programs. Would individual carriers conclude the potential benefits of receiving a steady, model-derived support amount for a multi-year period, combined with an incentive-based structure that allows carriers to capture the benefits of efficiency, are sufficient to pursue this option? We seek comment on how facilitating a transition for rate-of-return carriers to model-based support would impact providers' investment plans and service offerings, as well as consumer choices and rates.

12. *Timing.* Nothing in the *USF/ICC Transformation Order* precludes current rate-of-return carriers from electing to convert to price cap regulation in order to receive Connect America Phase II model-based support. Given that significant progress has been made on Phase II implementation, however, it may be unlikely that a rate-of-return carrier could complete the process of converting to price cap regulation before the Bureau adopts a cost model and specifies the amount of model-based support that will be offered to price cap

carriers. We therefore focus on how a rate-of-return carrier might convert to price cap regulation and receive model-based support after Phase II is offered to the price cap carriers. Should there be a deadline for rate-of-return carriers to file for such a voluntary conversion to price caps in order to receive model-based support?

13. *Amount of Support.* We seek comment on the amount of support to be offered to future converts to price cap regulation under Connect America Fund Phase II. Because the funding threshold and ''extremely high-cost'' threshold will have been determined and model cost estimates for the converting carriers will be available at the time of the conversion, one option would be to provide the converting carrier with the level of support calculated by the model. We seek comment on this method for determining support for price cap converts.

14. *Budgetary Impact.* We seek comment on the monetary impact on the Connect America Fund of providing a voluntary path for current rate-of-return carriers to opt-in to model-based support, and how this might impact the Commission's budget for price cap territories versus rate-of-return territories. To what extent would this option only be elected by carriers for whom model-based support is equal to or greater than their current support? How likely is it that some rate-of-return carriers may choose this voluntary path even if they would receive less support in the near term, for the advantage of having a steady universal service revenue stream for a defined period of years?

15. We also seek comment on the effect of a price cap conversion on high-cost loop support. We note that, in the *USF/ICC Transformation Order,* the Commission rebased the cap on HCLS to reflect that price cap carriers and their rate-of-return affiliates would be receiving support pursuant to Connect America and would no longer be eligible for HCLS. Consistent with this precedent, the Bureau proposes that HCLS should be similarly rebased if a rate-of-return carrier converts to price cap regulation in the future. The Bureau seeks comment on this proposal.

16. *Commitment to Accept Model-Based Support.* Existing price cap carriers will be provided an opportunity to make a state-level commitment for model-based support after the Bureau releases a public notice indicating the census blocks eligible for funding and how much Connect America Phase II support will be offered to them. We seek comment regarding whether new price cap regulated carriers should similarly be provided an opportunity to accept or decline model-based support, or if the act of becoming a price cap carrier effectively should be deemed an acceptance of support for the relevant census blocks. Would there be any instance in which a price cap conversion could be granted, and the converting carrier could be permitted to decline the support, which then could be assigned through competitive bidding? Should rate-of-return carriers be permitted to decline model-determined support if that occurs before the time to finalize the census blocks that will be subject to bidding in the competitive process following the offer of state-level support to price cap carriers? Should carriers in this situation be required to elect support on a state-wide basis, if they have multiple study areas within a state, or should they be permitted to elect support on a study area basis? Are there any other issues relating to the process of accepting model-based support that would need to be resolved for new price cap converts?

17. *Term for Connect America Phase II Support.* The *USF/ICC Transformation Order* specifies that Connect America Phase II will last five years. We seek comment regarding whether carriers converting to price cap regulation after Connect America Phase II commences should receive Connect America Phase II support on the same time table as other price cap carriers. One option would be that the Commission would determine successor mechanisms for all carriers receiving Connect America Phase II support, regardless of when the carrier began receiving support. For example, if a rate-of-return carrier converted to price cap regulation at the end of year 3 of the Connect America Phase II, the carrier would only participate in Connect America Phase II for years 4 and 5. Transitioning from Connect America Phase II to any subsequent mechanisms for all areas at the same time will ensure that the market-based mechanisms anticipated by the Commission will have the widest applicable area, which in turn could maximize efficiencies. We seek comment on this proposal. Alternatively, should carriers that voluntarily elect to receive model-based support receive such support for a term of five years, commencing with the date they first receive such support? Or, should current rate-of-return carriers that voluntarily elect to receive model-based support be provided support for a period longer than five years, such as a period of time to coincide with the intercarrier compensation transition for rate-of-return carriers. We seek comment on these alternatives, as well as any other proposals for Connect America Phase II terms that parties may put forth in the record.

18. *Service Obligations.* Carriers receiving support pursuant to Connect America Fund Phase II will be subject to specific service obligations and reporting requirements to demonstrate compliance with those obligations. We seek comment on whether or how those obligations should be modified for carriers that convert to price cap regulation after the implementation of model-based support for current price cap carriers and their rate-of-return affiliates. One option would be for all service obligations to remain the same for price cap converts as for current price cap carriers, except that the number of locations served with broadband could be adjusted on a sliding scale to reflect the shorter time for buildout. We seek comment on this proposal, and also invite commenters to suggest alternatives that would be consistent with the Commission's goals in establishing service obligations for Connect America Fund Phase II.

19. *Alternatives to Price Cap Conversion.* We also seek comment on an alternative to providing Phase II model-based support only to carriers who convert to price cap regulation, as discussed above. We ask parties to comment on whether the Commission should allow rate-of-return carriers to elect to receive model-based support in lieu of HCLS and ICLS, but otherwise remain regulated under rate-of-return regulation. Parties should address the extent to which this alternative would encourage or allow carriers to shift costs from the common line category to the special access category and the ability of, and the measures needed for, the Commission to monitor such activities. Parties should identify any rules that would need to be revised to implement this alternative, including any rule changes necessary to ensure that a carrier does not receive both Phase II support and support under the existing mechanisms for rate-of-return companies (*i.e.,* HCLS and ICLS). We also ask parties to address the matters discussed in the preceding paragraphs as they relate to this alternative approach.

### *C. Procedural Matters*

#### 1. Initial Regulatory Flexibility Act Analysis

20. The *USF/ICC Transformation Order and FNPRM* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the

potential impact on small entities of the Commission's proposal. We invite parties to file comments on the IRFA in light of this additional notice.

2. Initial Paperwork Reduction Act of 1995 Analysis

21. This document seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

3. Filing Requirements

22. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

(1) All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

(2) Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

(3) U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

23. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

24. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

**Kimberly A. Scardino,**

*Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.*

[FR Doc. 2013–13361 Filed 6–5–13; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 2 and 4

**[FAR Case 2012–023; Docket 2012–0023; Sequence 1]**

**RIN 9000–AM60**

## Federal Acquisition Regulation; Uniform Procurement Identification

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a uniform Procurement Instrument Identification (PIID) numbering system, which will require the use of Activity Address Codes (AACs) as the unique identifier for contracting offices and other offices, in order to standardize procurement transactions across the Federal Government. This proposed rule continues and strengthens efforts at standardization accomplished under a previous FAR case.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before August 5, 2013 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2012–023 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2012–023''. Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2012–023''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2012–023'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* U.S. General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

*Instructions:* Please submit comments only and cite FAR Case 2012–023, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Loeb, Procurement Analyst, at 202–501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–023.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In July of 2011, DoD, GSA, and NASA published a final FAR rule, Unique Procurement Instrument Identifier, FAR Case 2009–023, which began the process of standardizing the use of unique Procurement Instrument Identifiers (PIIDs) beyond the Federal Procurement Data System (FPDS) to encompass the overall Federal procurement community. FAR case 2009–023 provided policy and instructions at FAR subpart 4.16 for agencies to assign and utilize unique PIIDs and supplementary PIIDs in procurement transactions. A number of public comments received during the rulemaking process expressed positive feedback and reaction to the concept of standardizing PIIDs across Government. Several respondents offered encouragement and suggestions for furthering the effort, in particular by establishing a standard, Governmentwide scheme that identifies actions to the office level, not just to the agency level.

In June of 2011, the President created the Government Accountability and Transparency Board (GAT Board) and tasked the board to, among other things, recommend ways to improve tracking of Federal spending data. The GAT Board submitted its report with three specific recommendations to the President in December of 2011. Recommendation number 3 of this report is to implement a uniform award identification system among various financial transactions conducted across the Federal Government by a number of communities, *e.g.,* procurement, grants, and finance. The goal of this recommendation is to ensure uniformity and consistency of data, thereby enhancing the transparency to the public of Federal spending data. This proposed FAR rule is consistent with GAT Board recommendation three.

Currently, agencies and contracting offices within agencies have PIIDs of varying lengths, which may or may not contain spaces or hyphens. The disparate numbering systems in use today impede successful achievement of transparency and accountability in the following ways:

- The ability to trace transactions across electronic interfaces is difficult and at times impossible. In some cases paper processing or tracking is the only available means.
- The collection, review, and validation of data are labor intensive and inefficient.
- The inconsistencies in reporting and collection of data increase the uncertainty of data validity.
- The ability to reconcile data as reported by the vendor community with the data reported and certified by agencies is impacted.
- The effectiveness of the oversight community's efforts is questioned due to data quality concerns.

With this proposed rule the Federal procurement community continues to improve standardization of a unique instrument identifier moving the procurement community in the direction of the GAT Board recommendation of uniformity and consistency of data. This, in turn, will promote achievement of rigorous accountability of procurement dollars and processes and compliance to regulatory and statutory acquisition requirements such as those of the Federal Funding Accountability and Transparency Act of 2006. The GAT Board recommendation, as it applies to other financial transactions, (*e.g.,* grants, loans, financial payments) is not addressed by this proposed rule.

## II. Proposed Changes to FAR Parts 2 and 4

At FAR 2.101 Definitions, AAC is defined to mean a distinct six-position code consisting of a combination of alpha and/or numeric characters assigned to identify agency specific offices, units, activities, or organizations.

At FAR 4.605, Contract Reporting Procedures, a paragraph is added to direct the use of AACs as the contracting office code and as the program/funding office code for purposes of FPDS reporting.

Changes are proposed to FAR subpart 4.16, Unique Procurement Instrument Identifiers, to prescribe policies and procedures for the assignment of unique PIIDs containing AACs. Agencies will initially use the new unique PIID structure for all new solicitations and awards, and their associated amendments and modifications, beginning not later than October 1, 2014. Not later than October 1, 2016, agencies shall use the required structure for all contract actions (including for all contract actions already in effect). At FAR 4.1602 Policy, paragraphs (a) through (c), instructions are provided delineating that which is applicable before, during and after the transition period.

A new procedural section, FAR 4.1604 is added to provide instruction on the construct and configuration of the basic PIID and the supplementary PIID. The basic PIID is made up of 13 to 17 alpha and/or numeric characters configured to convey certain information. Positions one through six of the PIID are the AAC Activity Address Code. Positions seven and eight are the last two digits of the fiscal year of the date the procurement instrument is signed, *i.e.,* issued or awarded. Position nine is an alpha character that will indicate the type of instrument or action. Positions 10 through 17 are the serial numbering of the PIID and are issued sequentially. Positions 10 through 17 are the agency-assigned numbers. Positions 10 through 17 may be alpha-numeric, but shall not contain special characters (such as hyphens and dashes) or spaces.

Supplementary PIIDs are used to identify amendments and modifications. Amendment supplementary PIIDs for solicitations are numeric, four positions, and are issued sequentially beginning with 0001. Supplementary PIIDs for modifications to contracts or agreements may be alpha and/or numeric. Modifications issued by an administering contracting office shall begin with the letter A. Modifications issued by a procuring contracting office shall begin with the letter P. Supplementary identification numbers shall be assigned in sequence and not until it has been determined that a modification is to be issued.

## III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting

flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

Although this proposed rule is directed at internal Government processes and procedures and does not impose any requirements on the vendor community, it may affect some entities if those entities have arranged certain of their business systems to recognize PIIDs of agencies they interact with, and those agencies do not currently mirror the PIID configuration of this proposed rule. The proposed rule would provide a predictable standardized format vendors may use in interactions with the Federal government. In FY 2012 awards were made to 67,785 unique vendors that likely interact with agencies that do not currently use the proposed PIID configuration, of these, 45,353 were small business vendors.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR case 2012–023) in correspondence.

**V. Paperwork Reduction Act**

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 2 and 4**

Government procurement.

Dated: May 30, 2013.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2 and 4 as set forth below:

■ 1. The authority citation for 48 CFR parts 2 and 4 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

## PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition ''Activity Address Code (AAC)'' to read as follows:

**2.101 Definitions.**

* * * * *

(b) * * *

(2) * * *

*Activity Address Code (AAC)* means a distinct six-position code consisting of a combination of alpha and/or numeric characters assigned to identify specific agency offices, units, activities, or organizations by the General Services Administration for civilian agencies and Department of Defense for defense agencies.

* * * * *

## PART 4—ADMINISTRATIVE MATTERS

■ 3. Amend section 4.605 by—

■ a. Removing from paragraph (a) ''4.1601,'' and adding ''4.601 to 4.1603,'' in its place; and

■ b. Adding paragraph (e) to read as follows:

**4.605 Procedures.**

* * * * *

(e) *Office Codes.* Agencies shall—

(1) Use the Activity Address Code (AAC), as defined in 2.101, assigned to the issuing contracting office as the contracting office code, and

(2) Use the AAC assigned to the program/funding office providing the predominance of funding for the contract action as the program/funding office code.

■ 4. Revise section 4.1601 to read as follows:

**4.1601 Policy.**

(a) *Establishment of a Procurement Instrument Identifier (PIID).* Agencies shall have in place a process that ensures that each PIID used to identify a solicitation or contract action is unique Governmentwide, and will remain so for at least 20 years from the date of contract award. The PIID shall be used to identify all solicitation and contract actions. The PIID shall also be used to identify solicitation and contract actions in designated support and reporting systems (*e.g.,* Federal Procurement Data System, System for Award Management), in accordance with regulations, applicable authorities, and agency policies and procedures.) The PIID requirements will transition from existing procedures beginning not later than October 1, 2014 as outlined in paragraph (b) of this section.

(b) *Transition of PIID numbering.* (1) *Existing requirements. Applicable prior to October 1, 2014—*

(i) Agencies must submit their proposed PIID format to the General Services Administration's Integrated Acquisition Environment Program Office, which maintains a registry of the agency-unique identifier scheme; and

(ii) The PIID shall consist of alpha characters in the first positions to indicate the agency, followed by alpha-numeric characters according to agency procedures.

(2) *Transition.* Not later than October 1, 2014, agencies shall comply with paragraph (a) of this section and use the requirements in 4.1602 and 4.1603 for identifying all new solicitations and new awards and their associated amendments and modifications.

(3) *End state.* Not later than October 1, 2016, agencies shall comply with paragraph (a) of this section and use the requirements in 4.1602 and 4.1603 for all amendments to solicitations and modifications to awards issued using previous PIID numbering procedures.

(c) *Change in the Procurement Instrument Identifier.* (1) Agencies shall not change the PIID unless one of the following two circumstances apply:

(i) The PIID serial numbering system is exhausted. In this instance, the contracting officer may assign a new PIID by issuing a contract modification.

(ii) Continued use of a PIID is not possible or not in the Government's best interest solely for administrative reasons (*e.g.,* for implementations of new agency contract writing systems). In this instance, the contracting officer may assign a new PIID by issuing a contract modification.

(2) The modification shall clearly identify both the original and the newly assigned PIID. Issuance of a new PIID is an administrative change (see 43.101).

■ 5. Amend section 4.1602 by revising paragraph (c) to read as follows:

**4.1602 Identifying the PIID and supplementary PIID.**

* * * * *

(c) *Additional agency specific identification information.* If agency procedures require additional identification information in solicitations, contracts, or other related procurement instruments for administrative purposes, separate and clearly identify the additional information from the PIID.

■ 6. Add section 4.1603 to read as follows:

**4.1603 Procedures.**

(a) *Elements of a PIID.* The PIID consists of a combination of thirteen to seventeen alpha and/or numeric characters sequenced to convey certain information. Do not use special characters (such as hyphens, dashes or spaces).

(1) *Positions 1 through 6.* The first six positions identify the department/agency and office issuing the instrument. Use the AAC assigned to the issuing office for positions 1 through 6. Civilian agency points of contact for obtaining an AAC are on the AAC Contact list maintained by the General Services Administration and can be found at *http://www.gsa.gov/graphics/fas/Civilian_contacts.pdf.* For Department of Defense (DoD) inquiries contact the service/agency Central Service Point or DoDAAC Monitor, or if unknown, email *DODAADHQ@DLA.MIL* for assistance.

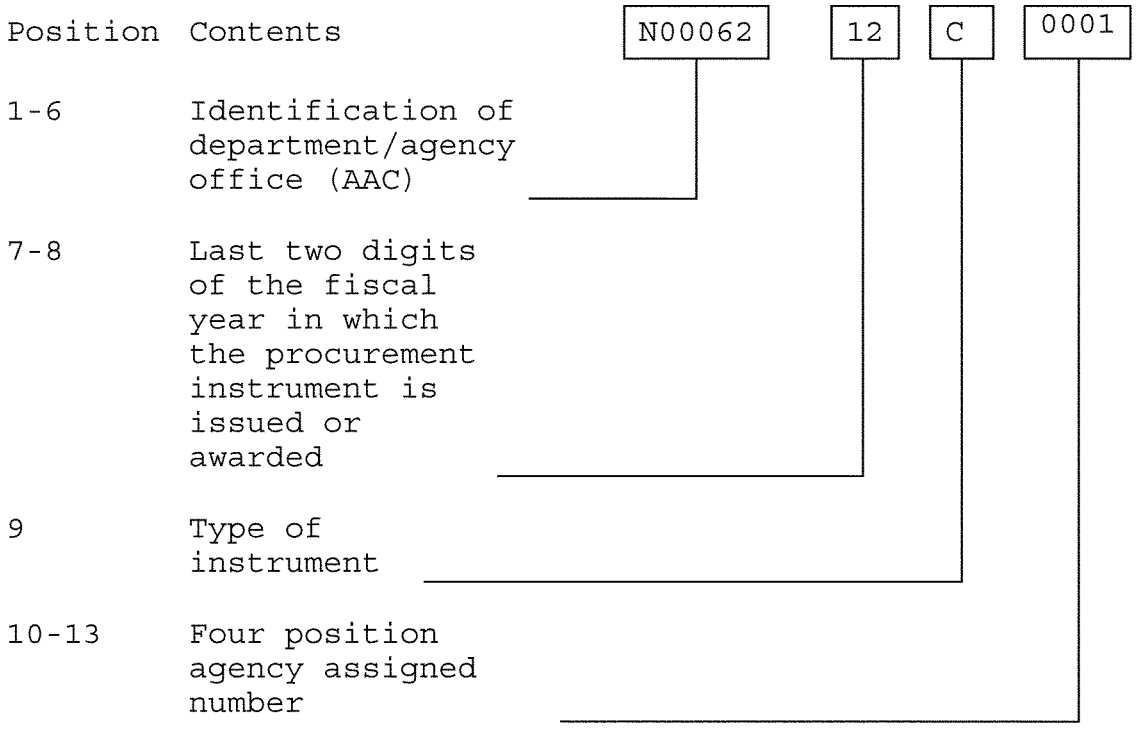
(2) *Positions 7 through 8.* The seventh and eighth positions are the last two digits of the fiscal year in which the procurement instrument is issued or awarded. This is the date the action is signed, not the effective date if the effective date is different.

(3) *Position 9.* Indicate the type of instrument by entering one of the following upper case letters in position nine. Departments and independent agencies may assign those letters identified for department use below in accordance with their agency policy, however, any use must be applied to the entire department or agency.

| Instrument | Letter designation |
|---|---|
| (i) Blanket purchase agreements | A |
| (ii) Invitations for bids | B |
| (iii) Contracts of all types except indefinite-delivery contracts (see subpart 16.5) | C |
| (iv) Indefinite-delivery contracts (including Federal Supply Schedules, Governmentwide acquisition contracts (GWACs), and multi-agency contracts) | D |
| (v) Reserved for future Federal Governmentwide use | E |
| (vi) Task orders, delivery orders or calls under indefinite-delivery contracts (including Federal Supply Schedules, Government-wide acquisition contracts (GWACs), and multi-agency contracts), blanket purchase agreements, or basic ordering agreements | F |
| (vii) Basic ordering agreements | G |
| (viii) Agreements, including basic agreements and loan agreements, but excluding blanket purchase agreements, basic ordering agreements, and leases. Do not use this code for contracts or agreements with provisions for orders or calls | H |
| (ix) Do not use this letter | I |
| (x) Reserved for future Federal Governmentwide use | J |
| (xi) Reserved for departmental use | K |
| (xii) Lease agreements | L |
| (xiii) Reserved for departmental use | M |
| (xiv) Reserved for departmental use | N |
| (xv) Do not use this letter | O |
| (xvi) Purchase orders (assign V if numbering capacity of P is exhausted during a fiscal year) | P |
| (xvii) Requests for quotation (assign U if numbering capacity of Q is exhausted during a fiscal year) | Q |
| (xviii) Requests for proposals | R |
| (xix) Reserved for departmental use | S |
| (xx) Reserved for departmental use | T |
| (xxi) See Q, requests for quotation | U |
| (xxii) See P, purchase orders | V |
| (xxiii) Reserved for future Federal Governmentwide use | W |
| (xxiv) Reserved for future Federal Governmentwide use | X |
| (xxv) Imprest fund | Y |
| (xxvi) Reserved for future Federal Governmentwide use | Z |

(4) *Position 10 through 17.* Enter the number assigned by the issuing agency in these positions. Agencies may choose a minimum of four characters up to a maximum of eight characters to be used, but the same number of characters must be used agency-wide. If a number less than the maximum is used, do not use leading or trailing zeroes to make it equal the maximum in any system or data transmission. A separate series of numbers may be used for any type of instrument listed in paragraph (a)(3) of this section. An agency may reserve blocks of numbers or alpha-numeric numbers for use by its various components.

(5) *Illustration of PIID.* The following illustrates a properly configured PIID using four characters in the final positions:




(b) *Elements of a supplementary PIID.* Use the supplementary PIID to identify amendments to solicitations and modifications to contracts and agreements.

(1) *Amendments to solicitations.* Number amendments to solicitations sequentially using a four position numeric serial number added to the 13–17 character PIID beginning with 0001.

(2) *Modifications to contracts and agreements.* Number modifications to contracts and agreements using a six position alpha or numeric, or a combination thereof, added to the 13–17 character PIID.

(i) *Position 1.* Identify the office issuing the modification. The letter P shall be designated for modifications issued by the procuring contracting office. The letter A shall be used for modifications issued by the contract administration office (if other than the procuring contracting officer).

(ii) *Positions 2 through 6.* These positions may be alpha, numeric, or a combination thereof, in accordance with agency procedures.

(iii) Each office authorized to issue modifications shall assign the supplementary identification numbers in sequence. Do not assign the numbers until it has been determined that a modification is to be issued.

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**BILLING CODE 6820–EP–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 224

**[Docket No 1108195182318–01]**

**RIN 0648–BB20**

## Endangered Fish and Wildlife; Proposed Rule To Eliminate the Expiration Date Contained in the Final Rule To Reduce the Threat of Ship Collisions With North Atlantic Right Whales

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to eliminate the expiration date (or ''sunset clause'') contained in regulations requiring vessel speed restrictions to reduce the likelihood of lethal vessel collisions with North Atlantic right whales. The regulations restrict vessel speeds to no more than 10 knots for vessels 65 ft (19.8 m) or greater in overall length in certain locations and at certain times of the year along the east coast of the U.S. Atlantic seaboard. The speed regulations will expire December 9, 2013, unless the sunset clause is removed. NMFS seeks public comment on the Proposed Rule to eliminate the sunset clause and on metrics for assessing the long term costs and benefits of the rule to the endangered North Atlantic right whale population.

**DATES:** Written or electronic comments (see **ADDRESSES**) must be received no later than 5 p.m. local time on August 5, 2013.

**ADDRESSES:** Copies of this proposed rule and related documents can be obtained from: *www/nmfs.noaa.gov/pr/shipstrike*. Written requests for copies of these documents should be addressed to: Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: Right Whale Ship Strike Reduction Rule, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.You may submit comments, identified by [NOAA–NMFS–2012–0058], by any of the following methods:

*Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

*Mail:* Send comments to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, Attn: Right Whale Ship Strike Reduction Rule.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.)

voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Gregory Silber, Ph.D., *Greg.Silber@noaa.gov,* Office of Protected Resources, NMFS, at (301) 427–8485.

**SUPPLEMENTARY INFORMATION:**

## Background

The Western North Atlantic right whale (*Eubalaena glacialis*) was severely depleted by commercial whaling. By the early 1900s, the remaining population off North America was reduced to no more than a few hundred whales. Despite the existence of protection from commercial whaling since 1935, the remaining population has failed to fully recover. The most recent (October 2011) peer-reviewed estimate of minimum population size is 444 North Atlantic right whales known to be alive in 2009 (Waring *et al,* 2012), which is approximately the same number that existed 25 years ago (Best *et al.,* 2001). At this level, North Atlantic right whales are not only one of the world's most critically endangered large whale species but also one of the world's most endangered mammals.

Population models suggest that their abundance may have increased at a rate of approximately 2 percent per year during the 1980s, but that it declined at about the same rate in the 1990s (Caswell *et al.,* 1999; Waring *et al.,* 2012). Analysis of data on the minimum number of whales alive during 1990–2009 (based on 2011 analysis) indicate an increase in the number of catalogued whales during the period, a mean growth rate of 2.6 percent, but with high inter-annual variation in numbers (Waring *et al.,* 2012). These population trends are low compared to those for populations of other large whales that are recovering, such as south Atlantic right whales and taxonomically similar western Arctic bowhead whales, which have had growth rates of 4–7 percent or more per year for decades.

Inherently low rates of reproduction in large whales mean that recovery rates for these populations can be low even under the best of circumstances. North Atlantic right whales may live 60 years or more. The age of first reproduction for female North Atlantic right whales is about 7 to 10 years old and calving intervals for the population have been estimated to average from about 3.5 to more than 5 years over the past three decades (Kraus *et al.,* 2001; Kraus *et al.,* 2007). Considering the high rates of natural mortality for calves and juveniles compared to adults, population projections indicate that female right whales must produce at least four calves over their lifetime to allow population growth, because half of the calves born are male, and the survival of female calves to adulthood is less than one in two (Kraus *et al.,* 2001).

Between the mid-1980s and late-1990s, documented calf production for the North Atlantic right whale population averaged about 11 calves per year (Kraus *et al.,* 2001). Since 2001, a series of good calving years has been a source of optimism for future recovery. Between 1993 and 2010, calf production averaged about 17 calves per year (Waring *et al.,* 2012) and the average calving interval for adult females declined to close to its lowest recorded level (between 2000 and 2006) (Kraus *et al.,* 2007). However, not all calves enter the population as viable adults or sub-adults due, for example, to natural mortality. Between 17 and 45 calves are estimated to have died between 1989 and 2003 (Browning *et al.,* 2010).The mean number of adult females recruited into the population between 2000/01 and 2005/06 was 3.8 per year (Kraus *et al.,* 2007).

Because of the species' low reproductive output and small population size, even low levels of human-caused mortality can pose a significant obstacle for North Atlantic right whale recovery. Population modeling studies in the late 1990s (Caswell *et al.,* 1999; Fujiwara and Caswell, 2001) indicated that preventing the death of two adult females per year could be sufficient to reverse the slow decline detected in right whale population trends in the 1990s. However, in some years the rate of removal of individuals from this population due to human activities may exceed this number. In the 2004/2005 calving season alone three adult females were found dead with near-term fetuses.

The primary causes of the right whale's failure to recover are deaths resulting from collisions with ships and entanglement in commercial fishing gear (Clapham *et al.,* 1999; Knowlton and Kraus, 2001; Moore *et al.,* 2005; NMFS, 2005). An average of approximately two *known* vessel collision-related right whale deaths have occurred annually over the last decade (Henry *et al.,* 2012, Waring *et al.,* 2012) and an average of 1.2 known vessel-strike related fatalities occurred in the period 2006–2010 (Waring *et al.,* 2012). NOAA believes the actual number of deaths can possibly be higher than those documented, as some deaths likely go undetected or unreported, and in many cases when deaths are observed it is not possible to determine the cause of death from recovered carcasses due, for example, to advanced decomposition. Kraus *et al.,* (2005) concluded that the number of documented deaths may be as little as 17 percent of the actual number of deaths from all sources.

Studies indicate that female (van der Hoop *et al.,* 2012) and sub-adult (Knowlton and Kraus, 2001) right whales are more often ship strike victims than are other age and gender classes. Although the reasons for this are not clear, one factor may be that pregnant females and females with nursing calves may spend more time at the surface where they are vulnerable to being struck. The effect of this on population recovery may be particularly profound if the lost female is at the height of, or just entering, her most reproductively active years because of the loss of her reproductive potential, and that of her female offspring, indefinitely.

The number of right whale deaths resulting from vessel collisions appears to be related to an overlap between important right whale feeding, calving, and migratory habitats and shipping corridors along the eastern United States and Canada. Most right whales that died as a result of ship collisions were first reported dead in or near major shipping channels off east coast ports between Jacksonville, Florida and New Brunswick, Canada. Right whales appear to be particularly vulnerable to ship strikes in their nursery areas off Georgia/Florida (Vanderlaan *et al.,* 2009). Based on massive injuries to whales killed by ships (*e.g.,* crushed skulls, internal hemorrhaging, severed tail stocks, and deep, broad propeller wounds) (Campbell-Malone, *et al.,* 2008), it appears that many right whales killed by vessels are victims of collisions with large ships.

For the North Atlantic right whale population to recover, vessel-related deaths and serious injuries must be reduced. The North Atlantic Right Whale Recovery Plan (NMFS, 2005) ranks steps to reduce and eliminate such deaths among its highest priorities, and indicates that developing and implementing an effective strategy to address this threat is essential to recovery of the species. The ultimate

goal of identifying and implementing conservation measures, including this one, on behalf of an endangered species is to recover the species.

NMFS has taken steps to reduce vessel collisions with right whales, including extensive efforts to raise awareness among, and encourage voluntary actions by, vessel operators to reduce the risk of collisions (descriptions of these actions can be found in 73 FR 60173 (October 10, 2008); Lagueux *et al.,* 2011; MMC, 2010). Despite those measures, whale deaths from ship strikes continue (Henry *et al.,* 2012) and voluntary measures appear to be insufficient to address the problem (71 FR 36304; June 26, 2006). Accordingly, NMFS promulgated regulations that require vessels 65 feet and greater in length to travel at speeds of 10 knots or less in certain defined areas during certain times of the year (73 FR 60173; October 10, 2008).

As indicated in that rule, vessel speed has been implicated as a principal causal factor in the severity of vessel collisions with large whales. As vessel speed increases, the probability of serious injury or death of a whale involved in a strike increases (Pace and Silber, 2005; Vanderlaan and Taggart, 2007). Studies have also indicated that as vessel speed increases so does both the size of the zone of influence around the hull of a vessel (*i.e.,* the area in which a whale is vulnerable to a strike or might be drawn into a strike) and acceleration (*i.e.,* impact velocity) experienced by the whale involved in a collision (Campbell-Malone, 2007; Silber *et al.,* 2010).

Among the comments that NMFS received on its 2008 proposed rule for the vessel speed restrictions were those indicating that the specific ways in which whale and vessel interacted prior to a collision were not well understood, and vessel speed restrictions were not likely to achieve their intended purpose, and thus that the rule should expire at a time certain. NMFS acknowledged there was uncertainty regarding the manner in which ships and whales interact at the time of a strike and the mechanisms that drive the relationship of speed and other factors (*e.g.,* whale behavior in response to an approaching vessel) that lead to injuries and deaths. In view of those uncertainties and the burdens imposed on vessel operators, NMFS added a ''sunset'' provision to the final rule under which the regulation would expire five years from its effective date (*i.e.,* December 9, 2013). Given that the justification for establishing the initial rule remains applicable and is supported by subsequent studies regarding the diminished probability of lethal strikes and an absence of vessel-related right whale deaths since the rule went into effect (as discussed below), NMFS specifically requests comments on this proposed rule to remove the sunset provision contained in the existing regulations.

Further, in accordance with Executive Order 13563, NOAA conducts periodic and retrospective reviews of its existing regulations. Recent retrospective analysis of the existing rule (which was done by quantifying actual vessel speeds following implementation of the rule) indicate that economic impacts of the rule are substantially lower than were initially projected in 2008 (Nathan Associates Inc., 2012). However, quantifying the benefits of the existing vessel speed restriction rule can be less straightforward because the rule has been in effect for a relatively short period and because it can be difficult to determine if growth rates in a small biological population are linked to a specific conservation measure, particularly when that population is subject to a number of threats.

Studies indicate that the North Atlantic right whale population is slowly growing (Waring, *et al.,* 2012). In addition, as noted above, recent studies indicate that the probability of lethal strikes have been diminished substantially as a result of the rule (Lagueux *et al.,* 2011; Wiley *et al.,* 2011; Conn and Silber, 2013), and there have been no vessel-strike related right whale deaths in the areas covered by the vessel speed restriction rule since its implementation. Still, there may be additional means of assessing whether the rule is meeting its objectives, and, therefore whether an alternative time for a sunset provision may be appropriate. To address these questions and provide benchmarks or a timetable for retrospective review of any final rule in this proceeding, NOAA seeks public feedback about information that may help establish the amount of time and the studies needed to determine how effective the rule is in protecting and recovering the population over the long term. In other words, to conduct a reassessment of the benefits of the rule, what metrics are needed and how much time is needed to obtain data for such metrics?

In this regard, NMFS indicated that while the rule was in effect, the agency would, to the extent possible with existing resources, synthesize existing data, gather additional data, or conduct additional research on ship/whale collisions to address those uncertainties. NMFS also committed to review the previously estimated economic consequences of the speed restriction rule (73 FR 60183 (comment and response 11)). Some of this work has now been completed (Nathan Associates Inc., 2012). NMFS also noted in the final rule that determining the biological effectiveness of protective measures like the speed rule to a high level of statistical significance is difficult and takes many years of data collection (73 FR 60182 (comment and response 7)).

In November 2008, NMFS convened a workshop, and later prepared a report that identified ways to assess the rule's effectiveness (Silber and Bettridge, 2009). As did the final rule, the workshop participants recognized that adequately assessing the effectiveness of any protective measure (the vessel speed rule included) with statistical rigor would be nearly impossible in brief sampling periods (*e.g.,* 2–3 years) because definitively-determined ship strike-related right whale deaths are rare occurrences, and the ability to ascribe a cause of death is limited. Therefore, conclusions regarding the rule's biological effectiveness would require data collection periods longer than one to five years. These caveats notwithstanding, NMFS committed to assess the rule's effectiveness to the extent possible.

Consistent with the workshop report, NMFS initiated studies to assess, among other things, vessel operator response to, and compliance with, the provisions of the rule; changes in ship strike-related death rates in U.S. east coast large whale populations; and economic impacts of the rule to shipping and related maritime interests. The findings of these studies are summarized in Silber and Bettridge (2012). Statistical analyses contained in the 2012 report indicated that the sampling period was too short to make a meaningful determination about the rule's impact on the right whale population. Simply detecting a relatively large change in the rate of known ship strike deaths and serious injuries would require 5–7 or more years (depending on the magnitude of the change), perhaps longer (Pace, 2011; Silber and Bettridge, 2012). Thus, for these reasons and others indicated above, it is difficult to make definitive conclusions at this time regarding the long-term biological effectiveness of the current vessel speed restriction rule.

With regard to reassessment of the existing rule, NMFS will continue to monitor right and large whale death rates; determine causes of whale deaths when possible; monitor right whale population size, demographics, and such things as calving and recruitment

rates; monitor vessel operations in response to the vessel speed restrictions; attempt to further assess the relationship between vessel speed and the likelihood of ship strikes of whales; and evaluate new and historic whale sighting records. Such analysis eventually may lead to subsequent rulemaking to modify or refine certain aspects of the regulation (*e.g.,* possible changes to the locations, dimensions, or duration of management areas, or termination of parts or all of the rule's provisions). Those efforts are ongoing but will not be concluded before the current rule expires. Therefore, NMFS also requests comments on its ongoing activities to monitor and assess the rule's effectiveness, as well as input on the data, metrics, and time needed to do so.

NMFS continues to believe the 2008 speed regulation is an important conservation measure for North Atlantic right whales, based on the supporting information contained in the preamble for the 2008 rule, additional information that has emerged since, and the lack of any new information that contradicts our original conclusions that the regulation is justified. Accordingly, NMFS is proposing to remove the sunset clause to allow this protective regulation to remain in effect and seeks comment on this proposed action. In addition, given that the justification for establishing the initial rule remains applicable and is supported by subsequent studies, but that difficulty remains in quantifying the benefits of the existing rule, NOAA requests comments on whether the final rule should include an extension of the sunset provision that would allow time for a more comprehensive assessment of the benefits and effectiveness of the rule, and what time frame would be appropriate for such an extension. Further, NOAA seeks comments on modifications that would improve the effectiveness of the rule.

**Justification for This Proposed Rule**

The use of vessel speed restrictions in the 2008 rule to reduce lethal vessel strikes of right whales was based largely on analysis by Laist *et al.* (2001), Pace and Silber (2005), and Vanderlaan and Taggart (2007). These studies found that the likelihood of serious injury and death in whales struck by vessels was diminished by reduced vessel speed. The latter two analyses indicated that the probability of death or a serious injury of a struck whale is rapidly diminished when vessel speeds are below 12 knots (and the probability decreases as speed decreases). Vanderlaan and Taggart (2007) concluded that for each one-knot increase in vessel speed the likelihood of a fatal whale strike increased by 1.5-fold. Based on the findings reported in these same studies, vessel speed restrictions are being used in other locations to reduce the threat of ship strikes to large whales including humpback whales in Glacier Bay, AK, and fin and sperm whales in the Mediterranean Sea. Vessel speed restrictions have also been effective in reducing vessel strikes of manatees (Laist and Shaw, 2005), and the relationship between vessel speed and the likelihood of collisions with marine turtles has been demonstrated (Hazel and Gyuris, 2006; Hazel *et al.,* 2007).

The studies relied upon for the 2008 rule continue to represent the best available information and NMFS is not aware of any new information that contradicts the original basis for the speed restriction. Additional relevant peer-reviewed studies have been published since the rule went into effect. Among them, Vanderlaan *et al.* (2009; regarding right whales along the U.S. and Canadian eastern seaboard), Vanderlaan and Taggart (2009; right whales in Canadian waters), and Gende *et al.* (2011; humpback whales in Alaskan waters) concluded that vessel speed restrictions are effective in reducing the occurrence or severity of vessel strikes of right and other large whale species in various geographic locations. Recent modeling studies estimated that the vessel speed restrictions established by the 2008 final rule have substantially lowered the probability of lethal vessel strikes of North Atlantic right whales (Lagueux *et al.,* 2011; Wiley *et al.,* 2011; Conn and Silber, 2013). In addition, no right whale vessel strike-related fatalities have occurred in or near the vessel speed restriction areas established by the 2008 rule (from December 2008 to present). At least two right whale deaths or serious injuries have occurred as a result of vessel strikes since implementation of the rule, but they either occurred outside vessel speed zones or involved vessels not subject to the rule. In one case the vessel type involved is not known and a non-military sovereign vessel was involved in the second case. Operators of sovereign vessels in U.S. waters that are not subject to the provisions of the rule (*e.g.,* military vessels) are well aware of the vessel speed restrictions through ESA Section 7 consultations with NMFS, regular interagency collaboration and notification, and through NMFS involvement in these agencies' marine conservation programs. Also, NOAA provides information to operators of vessels that are not subject to the rule due to vessel size (*e.g.,* those less than 65 feet in length) via notices that routinely accompany marine weather broadcasts and other radio broadcasts to boaters, information posted at small ports and dock facilities, a smart phone application, the distribution of brochures, its maritime community liaisons, press releases, and in meetings with the general public.

Based on the information relied upon for the 2008 speed restriction rule and subsequent information cited herein, NMFS has determined that the provisions of that rule should be extended to maintain the status quo and to continue a measure designed to reduce the threat of vessel collisions with Western North Atlantic right whales. The way to achieve that is through the proposed removal of the expiration provision currently in the regulation. The underlying science and administrative record providing support for the vessel speed restrictions remain unchanged. All other provisions of the rule as it now exists would remain in place.

**Public Participation**

It is the policy of the Department of Commerce, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section. All comments must be received by midnight of the close of the comment period.

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## Classification

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

This final rule does not have Federalism implications as that term is defined in Executive Order 13132.

This proposed rule does not contain any new collections of information subject to the Paperwork Reduction Act (PRA). However, the regulation that this proposed rule would extend does contain such a collection of information. If under certain conditions deviation from the speed restriction are necessary to maintain safe maneuvering speed, the vessel log book must contain an entry, signed and dated by the master of the vessel, documenting the reasons for the deviation, the speed at which the vessel is operated, the area, and the time and duration of such deviation. These entries are estimated to average five minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. On October 30, 2008, the Office of Management and Budget (OMB) approved the collection-of-information requirements contained in the October 10, 2008, final rule with an expiration date of April 30, 2009. On August 27, 2009, OMB approved a request by NMFS to extend its approval of the collection-of-information requirements without change, with an expiration date of August 31, 2012. NMFS has applied for an extension of this expiration date. There is no additional cost to the affected public.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

NMFS prepared a draft and final Environmental Impact Statement (FEIS) pursuant to the National Environmental Policy Act and an accompanying Economic Analysis report for the existing rule. While the FEIS contained an alternative with an expiration clause, the DEIS and economic analysis evaluated an alternative without an expiration, and that alternative was incorporated by reference into the FEIS. This proposed rule seeks only to remove the expiration clause of the existing speed regulation. The provisions of the speed regulation that would remain upon removal of the expiration are otherwise the same as those analyzed in those documents. NMFS prepared a Supplemental Information Report (SIR) that provides updates to the information and analysis contained in the FEIS. NMFS also prepared an updated economic analysis for the existing regulation. Based on the SIR, NMFS determined preliminarily that a supplemental NEPA analysis is not required for this proposed rule. The FEIS is posted at: *http://www.nmfs.noaa.gov/pr/shipstrike/*. Copies of the Economic Analysis prepared for the FEIS are available from NMFS's Office of Protected Resources (see **ADDRESSES**).

Pursuant to the Regulatory Flexibility Act, NMFS prepared the following Initial Regulatory Flexibility Analysis (IRFA).

**IRFA**

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule, as well as the preambles to the vessel speed restriction 2006 proposed (71 FR 36299) and 2008 final (73 FR 60173) rules. This proposed rule would extend the provisions of the existing rule by removing its expiration date. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

This IRFA incorporates analysis prepared for the 10-knot vessel speed restrictions contained in the 2006 proposed and 2008 final rules, and the corresponding initial and final Regulatory Flexibility Act analyses and determinations contained in those rulemaking actions. It also incorporates economic analysis contained in the FEIS, and the Regulatory Impact Review (RIR) and Economic Analysis (Nathan Associates Inc., 2008) prepared for the 2008 final rule. In addition to these documents, incorporated here by reference, NMFS has conducted studies to update the previously prepared (*i.e.,* 2008) economic and other analyses. Results of those studies are provided in Silber and Bettridge (2012) and in Nathan Associates Inc. (2012) and are summarized in ''Economic Impact'' section below.

NMFS believes that there may be disproportionate impacts resulting from implementation of this proposed rule among types of small entities within the same industry as well as between large and small entities of different vessel types occurring within different industries based on the IRFA developed for the 2008 final rule. There may also be disproportionate impacts between or among vessels servicing different areas or ports, but there are no data or evidence to indicate that this is the case. The economic impacts of the proposed rule as it relates to small entities are discussed below.

This proposed rule would contribute to the protection of the critically endangered North Atlantic Right Whale and advance the objectives outlined in the recovery plan for the species. NMFS believes that the justification for the utility of vessel speed restriction in reducing the risk of fatal strikes to whales as provided in the final rule and as contained in various scientific studies (*e.g.,* Vanderlaan and Taggart, 2007) continue to apply. In addition, this conclusion has been backed by subsequent modeling analyses presented in a number of peer-reviewed papers published since implementation of the vessel speed rule (*e.g.,* Gende *et al.,* 2011; Vanderlaan et al, 2009; Wiley *et al.,* 2011; Conn and Silber, 2013) and as referenced in the ''Justification for this Proposed Rule'' section of this proposed rule (above). This proposed amendment to the existing rule would preserve the status quo beyond the current expiration date.

**Description and Estimate of the Number of Affected Small Entities to Which This Rule Will Apply**

This proposed rule will continue to apply to vessels that are 65 feet (19.8 m) or greater in overall length. Five industries are directly affected by this proposed rulemaking: Commercial shipping, passenger ferries, whale watching vessels, commercial fishing vessels, and charter fishing vessels. This analysis uses size standards prescribed by the Small Business Administration (SBA). Specifically, for international and domestic shipping operators, the SBA size standard for a small business is 500 employees or less. The same threshold applies for international cruise operators and domestic ferry service operators. For whale watching operators and charter fishing commercial fish harvesters, the SBA threshold is $7.0 million of average annual receipts. For commercial fishing operators, the SBA threshold is $4.0 million of average annual receipts. Based on the economic analysis provided for the 2008 final rule and the most recent economic impact studies (Nathan Associates Inc., 2012), the number of small entities potentially affected by this proposed rule, by industry, are expected to be as follows: 362 commercial shipping vessels of various classifications (31 of which are passenger ships), 297 commercial fishing vessels, 40 charter fishing vessels, 14 passenger ferries, 22 whale-watching vessels.

Detailed information on small entities, other than commercial shipping, can be found on pages 143 through 147 and in Tables 4–45 (commercial fishing), 4–46 (passenger ferries), and 4–49 (whale watching) of

the Economic Analysis for the FEIS (Nathan Associates Inc., 2008) prepared for the 2008 final rule and as updated on pages 31–36 of the Nathan Associates Inc. (2012) report. Detailed information on small entities in the commercial shipping sector is contained on pages 158 through 161 of the Economic Analysis for the FEIS and pages 29–33 of Nathan Associates Inc. (2012). Those analyses are incorporated here, as are updates to the economic impact analysis as noted below.

Based on analysis contained in the FRFA that accompanied the 2008 final rule and the 2012 Nathan Associates Inc. report (which is also incorporated into this IRFA), NMFS concludes that there may be disproportionate impacts resulting from implementation of that rule among types of small entities within the same industry as well as between large and small entities of different vessel types occurring within different industries. NMFS also believes that there may be disproportionate impacts between large commercial shipping and large passenger vessels, and the group consisting of passenger ferries, high-speed whale watching vessels, and charter fishing vessels (see ''Economic Impacts'' below). These conclusions were based on the assumption that large commercial vessels would be less adversely affected than their companion small commercial and shipping vessels.

**Economic Impacts**

*Proposed Alternative (Continuation of 10-Knot Speed Restriction)*

The proposed alternative continues the imposition of a 10-knot speed limit applied in defined areas on a seasonal basis. As noted above, economic impact analyses are contained in the IRFA for the 2006 proposed rule and Final Regulatory Flexibility Analysis (FRFA) for the 2008 final rule, draft and final EIS, and the accompanying 2008 economic analysis for the vessel speed restrictions. These analyses remain pertinent to this proposed action (and are not reprinted here, but are incorporated by reference). Further, they have been updated based on data collected since the 2008 rule has been in effect, including more recent (*i.e.,* 2009 and 2012) bunker fuel prices and improved vessel operation information (*i.e.,* actual, rather than projected, vessel traffic and speed data). This analysis can be found in Appendix K of Silber and Bettridge (2012) and in Nathan Associates Inc. (2012) which are available at *http://www.nmfs.noaa.gov/pr/shipstrike/*. The results of the updated economic analysis indicate that the overall economic impacts as well as the economic impacts to each of the industries directly affected by this proposed rule are likely to be lower than what had been predicted for the 2008 final rule.

Previous estimates for the 2006 proposed rule and the 2008 final rule had relied on 2003/2004 USCG port-call data (the best available at the time), 2004 vessel operating costs, 2008 fuel costs, and typical vessel operating speed by vessel type and size. New information was used to revise the economic impact estimates. The primary operational impact on the shipping industry is the extra sailing time caused when vessels limit their speed. Changes in sailing times were assessed using Automatic Identification System (AIS) vessel operation information, which enabled a more precise analysis of actual vessel speeds rather than assumptions about expected at-sea speed capabilities. Therefore, these data provided a quantification of the actual number and actual speeds of trips through affected areas rather than port-call information.

The results from the updated economic analysis indicate that the overall average delay in sailing time for all vessels was 0.37 hours (22 min) and ranged from 0.08 hours (5 min) for refrigerated cargo ships to 0.62 hours (37 minutes) for combination cargo (*e.g.,* oil-bulk-ore) carriers. The estimated delays were lower than what was predicted for the 2008 final rule, which projected overall estimated average delays of 1.2 hours for all vessel types and over 2 hours for freight barge trips into some ports.

The IRFA for the 2006 proposed rule reflected the alternatives being considered at the time to achieve the purpose and need. That information, while still relevant, is not repeated here. This current IRFA for the proposed action reflects the current purpose and need, namely, to maintain the status quo of reducing the risk of lethal ship strikes to highly endangered North Atlantic right whales.

The only alternative considered in this proposed rule is the ''no action'' alternative. This alternative would allow the provisions of the 2008 final rule to expire in December 9, 2013. The no-action alternative would be economically preferable for some small entities, including some passenger ferries, high-speed whale watching vessels, and charter fishing vessels. The ''no action'' alternative was rejected because NMFS has determined that vessel speed restrictions are needed to reduce the threat of ship collisions with right whales and to aid in the recovery of this highly endangered species.

The rule making process for the 2008 final rule considered different speed alternatives. As the IRFA and FRFA for that rule making acknowledged, a 12-knot or 14-knot speed limit would be economically preferable for some small entities. However, based on the best information available both then and now, the likelihood of serious injury and death to whales increases with vessel speed. Therefore, NMFS continues to believe that 10 knots provides the greatest protection for, and the greatest likelihood of allowing recovery of, right whales.

**Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule**

Recordkeeping requirements associated with this rule include logbook entries in the event of deviation from speed restrictions. These entries are estimated to average five minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

There are no compliance requirements other than the management actions contained in this proposed rule.

**List of Subjects in 50 CFR Part 224**

Endangered marine and anadromous species.

Dated: May 31, 2013.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, Performing the functions and duties of the Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

## PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for 50 CFR part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq,*

■ 2. In § 224.105, paragraph (d) is removed.

[FR Doc. 2013–13442 Filed 6–5–13; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 78, No. 109
Thursday, June 6, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

**RIN 0596–AC73**

### Burned Area Emergency Response, Forest Service

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of interim directive; request for public comment.

**SUMMARY:** The Forest Service is issuing an interim directive to guide its employees in revised procedures for Burned Area Emergency Response. The interim directive provides direction and guidance specific to assessing, planning and implementing post-fire emergency response actions on National Forest System (NFS) lands to ensure consistent and adequate analyses for evaluating post-fire risks and determining appropriate and cost-effective response actions. This interim directive supersedes the existing directive located at FSM 2523. Public comment is invited and will be considered during development of the final directive.

**DATES:** Comments must be received in writing by July 8, 2013.

**ADDRESSES:** Submit comments electronically through the Internet Web site at *http://www.regulations.gov* or mail written comments to U.S. Forest Service, Attn: Director, Watershed, Fish, Wildlife, Air and Rare Plants, Mail Stop 1121, 1400 Independence Ave SW., Washington, DC 20250–1121. If comments are sent by electronic means, please do not send duplicate comments via regular mail.

All comments, including names and addresses when provided, will be placed in the record and are available for public inspection and copying. Persons wishing to inspect the comments received on this interim directive may do so in the Office of the Director, Watershed, Fish, Wildlife, Air and Rare Plants, U.S. Forest Service, 3rd Floor-Northwest, Sidney R. Yates Federal Building, 201 14th Street SW., Washington, DC, between 8:30 a.m. and 4:00 p.m. on business days. Those wishing to inspect comments are encouraged to call ahead at 202–205–1167 to facilitate access to the building.

**FOR FURTHER INFORMATION CONTACT:** Penny Luehring, Watershed, Fish Wildlife, Air and Rare Plants Staff, 333 Broadway SE., Albuquerque, NM 87102, 505–842–3141 or *pluehring@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

#### Background and Need for the Interim Directive

The Forest Service has administered a Burned Area Emergency Response (BAER) program for over 30 years. The objective of the BAER program is to rapidly assess burned areas to identify post-wildfire threats to human safety, property and critical natural or cultural resources on National Forest System lands and take immediate and reasonable actions to manage unacceptable risks. The last substantive changes to the Forest Service BAER policy were in 2004. Since that time, over 10,000,000 acres of National Forest System lands have burned and the proportion of acreage burned at a high severity level has increased annually. Dry conditions, areas of tree mortality due to bark beetle infestations and hazardous fuels buildup are creating conditions that make the outlook for more and bigger fires almost certain. Also during that time, concerns on rising costs in the fire operations program have prompted increased efforts to improve cost efficiencies. These cost issues affect the Forest Service BAER program since funding for this program resides in the fire operations budget.

The increasing acres of burned land combined with fiscal concerns have prompted new management challenges for which existing policy is inadequate. The current FSM 2523 direction often fails to provide the specificity for determining when true post-fire emergencies may exist and what techniques exist to effectively mitigate or manage these emergencies in a fiscally prudent manner. The interim directive provides a consistent framework and terminology for assessing risk and making decisions regarding appropriate emergency response actions. It also incorporates changes that provide for increased cost-savings.

#### Summary of Revisions

Minor technical and editorial changes were made throughout the chapter. Substantive changes are listed and described below.

*FSM 2523.01—Authority*

This section includes an updated reference regarding the legal authority to enter into Watershed Restoration and Enhancement Agreements (Wyden Amendment authority). Section 2523.53 explains the conditions under which Wyden Amendment authority may be appropriate in the BAER program.

*FSM 2523.02—Objectives*

This sentence was revised to emphasize the emergency nature and focused scope of the BAER program. The revised objective is ''To identify imminent post-wildfire threats to human life and safety, property and critical natural or cultural resources on National Forest System lands and take immediate actions, as appropriate, to manage unacceptable risks.''

*2523.03—Policy*

Several changes were made in this section. The requirement for performing BAER assessments on all fires, regardless of size, was changed to only those fires 500 acres and larger. An internal program evaluation has demonstrated that there is seldom a request for treatment made for fires smaller than 500 acres. Removing the mandatory requirement to perform assessments on these small fires, given that requests for treatment are so infrequent, has the potential to provide time and cost savings. An option has been provided to allow for performing assessments on smaller fires when potential threats to human life and safety, property, or critical natural or cultural resources may exist. The term ''wildland fire'' in this section was replaced to ''wildfire'' to be consistent with the Federal Wildland Fire Management Policy. A sentence was added to emphasize that the critical values addressed by the BAER program

are limited to those listed in a new exhibit (FSM 2523.1, exhibit 01). Clarification was provided to ensure that any planned response actions are limited to those likely to substantially reduce risks within the first year. Changes were also made to limit the treatment of invasive species under BAER authority and to limit funding to one year to more closely align with the emergency nature of this program. Stricter requirements are included for justifying the use of BAER funding for repair or replacement of previously installed emergency stabilization measures. The policy on monitoring using BAER funding was clarified to describe the limited purpose for BAER monitoring. Changes were also made to clarify the criteria for determining when BAER treatments are appropriate in wilderness areas. A policy statement was added explicitly stating that BAER is not appropriate for non-emergency rehabilitation and restoration or to correct undesirable conditions that existed prior to the fire.

*2523.04—Responsibility*

Changed the caption from ''Director, Watershed and Air Management Staff, Washington Office'' to ''Washington Office, Director, Watershed, Fish, Wildlife, Air, and Rare Plants Management Staff'' and sets forth additional safety responsibilities at that director level.

Added responsibilities for safety and monitoring-needs identification at the regional forester level and clarified the conditions under which regional foresters may extend the seven-day assessment timeline. Established additional responsibility at the regional forester level for monitoring planned and actual regional BAER expenditures.

Added forest supervisor responsibility for pre-season preparedness with an emphasis on safety. Added forest supervisor responsibility for initiating and ensuring communication with appropriate Federal, Tribal, State, county, and local emergency response agencies regarding potential threats that may exist downstream of National Forest System lands and clearly communicating to those agencies the limits of Forest Service authorities.

Changed caption from ''District Rangers'' to ''Forest, Grassland, Prairie, Area Supervisors and District Rangers,'' for the purpose of combining BAER implementation, monitoring and reporting responsibilities into shared responsibility at the unit and district levels. Also in this section, additional safety responsibilities are set forth for BAER implementation and monitoring activities.

*2523.05—Definitions*

Added the source references to the existing definitions of ''Emergency Stabilization,'' ''Burned-Area Rehabilitation'' and ''Burned-Area Restoration.'' Added new definitions for ''Burned-Area Emergency,'' ''Risk,'' and ''Wildfire.''

*2523.05—Timeframes*

Clarified that final accomplishment reports are due within 60 days of completing response activities, rather than 60 days from monitoring completion.

*2523.1—Burned-Area Emergency Assessment*

Expanded this section to better clarify the process for conducting Burned-Area assessments, emphasizing the progression from risk assessment to planned actions in a sequential and logical fashion. The steps are: (1) Evaluate potential threats to critical values; (2) determine the risk level for each threat; (3) identify situations where unacceptable risks exist; (4) develop risk management objectives; (5) design response actions that meet the objectives; (6) evaluate potential response actions on likelihood for timely implementation, effectiveness in reducing the risk, feasibility and cost. Clarified this section to encourage consultation with Tribes for assistance in identifying critical cultural resource values.

Added two new exhibits to this section. Exhibit 01 lists the values considered critical under the BAER program to provide focus for the risk assessment and associated emergency response action planning processes. These values include human life, safety, high value property, important natural resources (high value water, soil productivity, hydrologic function, critical habitat for federally listed threatened or endangered species, and plant communities not currently negatively affected by invasive species or noxious weeds) and important cultural resources (cultural resources listed on or potentially eligible for the National Register of Historic Places, Traditional Cultural Properties and Indian Sacred Sites) on National Forest System lands.

Exhibit 02 is a qualitative risk assessment tool that compares the probability of damage or loss to the expected magnitude of consequences and assigns a risk level using five categories that range from 'very low' to 'very high'. Risk levels of 'high' and 'very high' are considered 'unacceptable' (and 'intermediate' is considered 'unacceptable' when the value is human life or safety). The exhibit also defines the terms probability of damage or loss and magnitude of consequences' which provide the justification for emergency response actions, including emergency stabilization in the BAER program.

*2523.2—Emergency Response Actions*

Clarified that BAER actions are response actions necessary to control the immediate impacts of a post-fire emergency and fall within the NEPA provisions for such actions described in 36 CFR 220.4 b (1). These NEPA provisions allow the responsible official to take necessary actions to control the immediate impacts of the emergency to mitigate harm to life, property or important natural or cultural resources. When taking such actions, the responsible official shall take into account any probable environmental consequences of the emergency action(s) and mitigate foreseeable adverse environmental effects to the extent practical.

Added a paragraph that describes the appropriate notification requirements when hazardous or unsafe conditions are identified and to emphasize the need to coordinate and cooperate with the appropriate Federal, State or local response agencies when flooding or other threats may continue downstream of National Forest System lands.

Clarified the hierarchy for emergency response decision strategies; describing the preferred order starting with natural recovery, to administrative closure, and then to stabilization actions. Improved the descriptive guidelines for employing response actions involving administrative closure and access control.

Removed the description of specific techniques for treatments involving large structures and cultural sites. This is technical guidance and more appropriate for inclusion in the Forest Service Handbook. A paragraph was added to describe how BAER funding should be used to implement administrative closures. The paragraph on appropriate response actions in wilderness areas was expanded to clearly describe the unique circumstances that would justify BAER actions in wilderness areas. Added guidance to the invasive species section to reinforce the one-year limitation on that type of treatment and include a reference to Forest Service Manual 2900 for general guidance on invasive species management.

*2523.3—Monitoring*

Expanded this section to clarify the types of monitoring appropriate for BAER funding. It contains a general description of BAER implementation and effectiveness monitoring. Effectiveness monitoring is divided into three levels, and this section describes the purpose, guidelines and planning responsibilities for each level.

*2523.4—Suppression-Damaged Areas*

Clarified that costs for suppression-damage rehabilitation activities are charged to the fire incident and not to BAER.

*2523.5—Financing*

Changed the caption from ''Financing'' to ''Use of Funds'' and added the reference to the Forest Service Handbook on Appropriation Use (FSH 6509.11g) which provides the overall direction on appropriate use of agency funds, including those used in BAER. Removed the guidance on approval responsibility and non-emergency rehabilitation, because it was redundant to that provided elsewhere in the directive.

Revised direction in this section to allow all wildfires regardless of origin to be potentially eligible for BAER. The original direction had stated that wildfires that started by way of planned ignitions (prescribed fires) could not qualify for BAER assessment or response actions.

Added additional clarification to identify the appropriate Forest Service coordination and cooperation actions when other Federal land is burned or at risk for post-fire damage. Updated the reference to reflect the current Interagency Agreement between the Department of the Interior and Forest Service for cooperation in fire management and BAER cooperation. Added direction to stress the importance of Forest Service coordination with other government agencies to identify shared risk management responsibilities for other Federal and non-Federal lands. Added a reference to the appropriate Forest Service Manual and Handbook for guidance on agreement requirements when using the Wyden authority.

*2523.6—Human Resources*

Reorganized this section to improve clarity. Established new codes and captions for the categories of ''Safety'' and ''Pay Provisions.'' Replaced previous specific guidance with a reference to the Incident Business Management Handbook (FSH 5109.34) as the source for direction on work/rest and driving/rest requirements that apply to BAER personnel.

*2523.7—Reporting*

Added information specifying the type of information required in the final accomplishment report.

*2523.8—Controls*

Removed specific direction regarding frequency of activity reviews and types of performance review(s) from this section. Instead, added a reference was added to FSM 1410, which provides overall guidance for Forest Service program and activity reviews.

*2523.9—Coordination Between BAER and Other Recovery Programs*

Added a new section setting forth direction on coordination between BAER and other, non-emergency, rehabilitation and long-term post-fire recovery programs.

**Regulatory Certifications**

*Environmental Impact*

This interim directive revises the adminstrative policies and procedures for conducting Burned Area Emergency Response activities on National Forest System lands. Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Agency has concluded that this interim directive falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environment assessment or environmental impact statement.

*Regulatory Impact*

This interim directive has been reviewed under USDA procedures and E.O. 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that this directive is non-significant for purposes of E.O. 12866. This action to clarify agency direction will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This interim directive will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, the interim directive will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of those programs.

This interim directive has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A small entities flexibility assessment has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This interim directive is focused on National Forest System Burned Area Emergency Response activities and imposes no requirements on small or large entities.

*Federalism*

The Agency has considered the interim directive under the requirements of E.O. 13132 on federalism and has determined that the directive conforms with the federalism principles set out in this Executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

*Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175 of November 6, 2000, ''Consultation and Coordination With Indian Tribal Governments,'' and in recognition of the unique government-to-government relationship with federally recognized Indian tribes, the Agency has consulted with tribal officials and considered the results of consultation in developing the interim directive.

On May 24, 2011, the Deputy Chief for the National Forest System sent letters to the Regional Foresters, Station Directors, Area Director, IITF Director, Deputy Chiefs, and Washington Office Directors instructing them to conduct government-to-government consultation with federally recognized tribes on the proposed BAER directive revisions. The Forest Service considers tribal consultation as an ongoing, iterative process that runs from development of proposed directives through issuance of final directives.

From late May 2011 to October 2011, Forest and Grassland Supervisors and District Rangers in each Region made contacts in person and in writing to the Tribes within their area of jurisdiction.

All comments received were considered in development of the interim directive.

The Agency received four comments from two tribes with interests in National Forest System land in the Southwestern, Pacific Southwest and Intermountain West regions. One comment noted the directive lacked emphasis on protection of heritage resources and cultural values. Two comments addressed the 500 acre minimum size limit for assessment and suggested that there should be an exception if cultural resources were affected. One comment stated that there was no provision for Tribal consultation and that tribes should be involved in the BAER process, especially if cultural sites are in the project area. These comments all resulted in changes incorporated into the interim directive.

The Agency has also determined that this interim directive does not impose substantial direct compliance costs on Indian tribal governments nor does it mandate tribal participation. Instead, it provides guidance to authorized officers to consult with affected tribes to assist in identifying critical cultural resources, and it seeks to ensure emergency stabilization actions do not negatively affect cultural resources.

*No Taking Implications*

The Agency has analyzed the interim directive in accordance with the principles and criteria contained in E.O. 12630. The Agency has determined that the directive does not pose the risk of a taking of private property.

*Civil Justice Reform*

The interim directive has been reviewed under E.O. 12988 of February 7, 1996, ''Civil Justice Reform''. At the time of adoption of this directive, (1) all state and local laws and regulations that conflicts with this directive or that impede full implementation of this directive were preempted; (2) no retroactive effect was given to the directive; and (3) administrative proceedings are not required before parties can file suit in court to challenge its provisions.

*Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (2 U.S.C. 1531–1538), the Agency has assessed the effects of the interim directive on State, local, and Tribal governments and the private sector. The directive will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

*Energy Effects*

The Agency has reviewed the interim directive under E.O. 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' The Agency has determined that the directive does not constitute a significant energy action as defined in the Executive Order.

*Controlling Paperwork Burdens on the Public*

The interim directive does not contain any additional record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and therefore imposes no additional paperwork burden on the public Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: May 31, 2013.

**Thomas L. Tidwell,**

*Chief, Forest Service.*

[FR Doc. 2013–13459 Filed 6–5–13; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule will meet in Salt Lake/West Valley City, Utah via webinar/conference call. The Committee operates in compliance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). The purpose of the Committee is to provide advice and recommendations on the implementation of the National Forest System Land Management Rule and to continue deliberations on formulating advice to the Secretary on the Proposed Land Management Planning Directives. The meeting is also open to the public.

**DATES:** The meeting will be held, via webinar/conference call, on Tuesday and Wednesday, June 25–26, 2013, from 8:00 a.m. to 6:00 p.m. and on Thursday, June 27, 2013, from 8:00 a.m. to 11:30 p.m., Mountain Standard Time.

**ADDRESSES:** The meeting will be held at the Embassy Suites Salt Lake/West Valley City, 3524 South Market Street, West Valley City, Utah 84119 via webinar/conference call. For anyone who would like to attend via webinar/conference call, please visit the following Web site: *http://www.fs.usda.gov/main/planningrule/committee* or contact Chalonda Jasper at *cjasper@fs.fed.us* for further details.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 1601 N Kent Street, Arlington, VA 22209, 6th Floor. Please contact, Chalonda Jasper at 202–260–9400, or *cjasper@fs.fed.us*, to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Chalonda Jasper, Ecosystem Management Coordination, 202–260–9400, *cjasper@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: (1) Continue deliberations on formulating advice for the Secretary on the Proposed Land Management Planning Directives, (2) Discuss findings from Committee working groups, and (3) Administrative tasks.

Further information, including the meeting agenda, will be posted on the Planning Rule Advisory Committee Web site at *http://www.fs.usda.gov/main/planningrule/committee*.

Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff before the meeting. Written comments must be sent to USDA Forest Service, Ecosystem Management Coordination, 201 14th Street SW., Mail Stop 1104, Washington, DC 20250–1104. Comments may also be sent via email to Chalonda Jasper at *cjasper@fs.fed.us*, or via facsimile to 703–235–0138. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/planningrule/committee* within 21 days of the meeting.

*Meeting Accommodations:* If you require sign language interpreting, assistive listening devices or other reasonable accommodation, please submit request prior to the meeting by contacting Chalonda Jasper at 202–260–

9400, *cjasper@fs.fed.us.* All reasonable accommodation requests are managed on a case-by-case basis.

Dated: May 31, 2013.

**Calvin N. Joyner,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2013–13452 Filed 6–5–13; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Forest Resource Coordinating Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Forest Resource Coordinating Committee will meet via teleconference every month on the following dates within 2013: June 20, July 18, August 15, and September 19 from 12:00 p.m. to 1:00 p.m. (eastern time). The committee is authorized under the Food, Conservation, and Energy Act of 2008 (P.L. 110–246). The purpose of the committee is to coordinate non-industrial private forestry activities within the Department of Agriculture and with the private sector. The goal of these meetings is to share information and help guide the committee to make recommendations with regard to landscape scale conservation and related USDA programs.

**DATES:** The meetings will be held on the following dates within 2013: June 20, July 18, August 15, and September 19 from 12:00 p.m. to 1:00 p.m. (eastern time).

**ADDRESSES:** The meetings will be held via teleconference that interested public participants will be able to access via the following call-in information: 1–888–537–7715, Passcode 9372699#. Agenda items for each conference call will be posted to the Forest Resource Coordinating Committee Web site, *http://www.fs.fed.us/spf/coop/frcc/*, and written comments will be accepted up to the morning of each conference call.

Written comments may be submited by mail to Attn: Maya Solomon, 1400 Independence Ave. SW., Mailstop 1123, Washington, DC 20250 or by email to *mayasolomon@fs.fed.us.*

All comments, including names and addresses when provided, are placed in the record and made available for public inspection and copying. The public may inspect comments received on the Forest Resource Coordinating Committee Web site at *http://www.fs.fed.us/spf/coop/frcc/*. Public participants are encouraged to RSVP to Maya Solomon via phone at 202–205–1376 or via email at *mayasolomon@fs.fed.us* prior to the conference call to facilitate distribution of support materials.

**FOR FURTHER INFORMATION CONTACT:** Maya Solomon, Forest Resource Coordinating Committee Program Coordinator, Cooperative Forestry staff, 202–205–1376 or Ted Beauvais, Designated Federal Officer, Cooperative Forestry staff, 202–205–1190. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Forest Resource Coordinating Committee will have monthly meetings to share information on topics relating to landscape scale conservation and USDA programs targeted to landscape scale conservation intiatives. The meeting will be held on the following dates within 2013: June 20, July 18, August 15, and September 19 from 12:00 p.m. to 1:00 p.m. (eastern time). All teleconferences are open to the public. However, the public is strongly encouraged to RVSP to Maya Solomon via phone at 202–205–1376 or via email at *mayasolomon@fs.fed.us* prior to the conference call to ensure all related documents are shared with public meeting participants.

The agenda and any available materials for these meetings will be posted to the Forest Resource Coordinating Committee Web site *http://www.fs.fed.us/spf/coop/frcc/.* Comments and issues of particular interest for this meeting will also be made available to the public on this Web site. A summary of the meeting will be posted at *http://www.fs.fed.us/spf/coop/* within 21 days after the meeting.

Dated: May 31, 2013.

**Paul Ries,**

*Associate Deputy Chief, State and Private Forestry.*

[FR Doc. 2013–13453 Filed 6–5–13; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

May 31, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received by July 8, 2013. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Rural Business—Cooperative Service**

*Title:* 7 CFR 1942–G, Rural Business Enterprise Grants and Television Demonstration Grants.

*OMB Control Number:* 0570–0022.

*Summary of Collection:* Section 310B of the Consolidated Farm and Rural Development Act authorizes the Rural Business Enterprise Grants to facilitate the development of small and emerging private businesses, industry and related employment for improving the economy in rural communities. Television Demonstration Grants (TDG) is available to statewide, private nonprofit, public television systems to provide information on agriculture and other issues of importance to farmers and

other rural residents. 7 CFR Part 1942, Subpart G, is a Rural Business-Cooperative Service (RBS) regulation which covers the administration of this program including eligibility requirements and evaluation criteria to make funding selection decisions.

*Need and Use of the Information:* RBS will use this information to determine (1) Eligibility; (2) the specific purposes for which grant funds will be utilized; (3) time frames or dates by which actions surrounding the use of funds will be accomplished; (4) who will be carrying out the purposes for which the grant is made; (5) project priority; (6) applicants experience in administering a rural economic development program; (7) employment improvements; and (8) mitigation of economic distress of a community through the creation or salvation of jobs or emergency situations. If the information were not collected, RBS would not be able to determine the eligibility of applicant(s) for the authorized purposes. Collecting this information infrequently would have an adverse effect on the Agency's ability to administer the grant program.

*Description of Respondents:* Business or other for profit; not-for-profit institutions.

*Number of Respondents:* 720.

*Frequency of Responses:* Record-keeping; reporting: Monthly, on occasion, quarterly.

*Total Burden Hours:* 28,692.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2013–13342 Filed 6–5–13; 8:45 am]

**BILLING CODE 3410–XY–P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meetings

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice.

**DATE AND TIME:** Friday, June 14, 2013; 9:30 a.m. e.s.t.

**PLACE:** 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC 20425.

**Meeting Agenda**

I. Approval of Agenda
II. Program Planning
- Discussion and Vote on Ranking of Concept Paper Topics for the 2014 Statutory Enforcement Report

IV. Management and Operations
- Consideration of Changes to Business Meeting Calendar for August 2013
- Consideration of Commission Letter supporting Equal Opportunity in the U.S. Armed Forces for Sikh Americans
- Status Update on Agency Reorganization
- Staff Director's report
- Chief of Regional Programs report

V. Approval of State Advisory Committee Appointment Slates
- Kentucky
- New York

VI. Adjourn Meeting

**CONTACT PERSON FOR FURTHER INFORMATION:** Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: June 3, 2013.

**TinaLouise Martin,**

*Director of Management/Human Resources.*

[FR Doc. 2013–13500 Filed 6–4–13; 11:15 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–954]**

### Certain Magnesia Carbon Bricks From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2011–2012

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* June 6, 2013.

**FOR FURTHER INFORMATION CONTACT:** Jerry Huang, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4047.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 4, 2012, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on certain magnesia carbon bricks from the People's Republic of China (''PRC'') covering the period September 1, 2011, through August 31, 2012.[1] The Department received a timely request for review of Yingkou Bayuquan Refractories Co., Ltd. (''Yingkou Bayuquan'') from Vesuvius USA Corporation (''Vesuvius''), a U.S. importer of magnesia carbon bricks from the PRC.[2] Fengchi Imp. & Exp. Co., Ltd. of Haicheng City (''Fengchi'') and its producer Fengchi Refractories Co., of Haicheng City also timely requested a review of Fengchi.[3] On October 31, 2012, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain magnesia carbon bricks from the PRC with respect to Fengchi and Yingkou Bayuquan.[4] On December 21, 2012, Fengchi and Fengchi Refractories Co., of Haicheng City timely withdrew their request for review of Fengchi.[5] On January 7, 2013, Vesuvius timely withdrew its request for review of Yingkou Bayuquan.[6]

**Rescission**

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Both parties timely submitted withdrawal requests within the 90-day period (*i.e.,* before January 29, 2013). Because we received no other requests for review of Fengchi, Yingkou Bayuquan or any other company subject to the order, we are rescinding this administrative review of the antidumping duty order on certain magnesia carbon bricks from the PRC in full, consistent with 19 CFR 351.213(d)(1).

**Assessment**

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Fengchi and Yingkou Bayuquan shall be assessed

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 77 FR 53863, 53864 (September 4, 2012).

[2] *See* Letter to the Department from Vesuvius, ''Magnesia Carbon Bricks from China, Case No. A–570–954: Request for Antidumping Duty Administrative Review,'' dated October 1, 2012.

[3] *See* Letter to the Department from Fengchi, ''Magnesia Carbon Bricks from China, Case No. A–570–954: Request for Antidumping Duty Administrative Review,'' dated October 1, 2012.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 77 FR 65858 (October 31, 2012).

[5] *See* Letter to the Department from Fengchi, ''Magnesia Carbon Bricks from China, Case No. A–570–954: Withdrawal of Request for Antidumping Duty Administrative Review'', dated December 21, 2012.

[6] *See* Letter to the Department from Vesuvius, ''Magnesia Carbon Bricks from China, Case No. A–570–954: Withdrawal of Request for Antidumping Duty Administrative Review'', dated January 7, 2013.

antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period September 1, 2011, through August 31, 2012, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

**Notification to Importers**

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification Regarding Administrative Protective Orders**

This notice also serves as a final reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 28, 2013.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2013–13432 Filed 6–5–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–851]**

## Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* June 6, 2013.

**SUMMARY:** On March 12, 2013, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period February 1, 2011, through January 31, 2012.[1] This review covers the following three companies: Blue Field (Sichuan) Food Industrial Co., Ltd. (Blue Field); Dujiangyan Xingda Foodstuffs Co., Ltd. (Xingda); and Zhejiang Iceman Group (Iceman Group). We provided interested parties an opportunity to comment on the *Preliminary Results.* We received no comments. The Final Results are unchanged from the *Preliminary Results.* The final weighted-average dumping margins for this review are listed below in the ''Final Results of Review'' section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2475 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 12, 2013, the Department published the *Preliminary Results* of the instant review.[2] By virtue of their failure to respond to our antidumping questionnaire, Xingda and Iceman Group failed to establish that they are separate from the PRC-wide entity.[3] Consequently, the Department examined the PRC-wide entity, which included Xingda and Iceman Group, among other companies, for the *Preliminary Results* and assigned a preliminary weighted-average dumping margin of 308.33 percent.[4]

We invited interested parties to comment on the *Preliminary Results.*[5] We received no comments from interested parties.

**Scope of the Order**

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Certain Preserved Mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.[6]

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms;'' (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS).

[1] *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 15683 (March 12, 2013) (*Preliminary Results*).

[2] *Id.*

[3] *See* March 4, 2013 ''Memorandum for the Preliminary Results in the Administrative Review: Certain Preserved Mushrooms from the Peopler's Republic of China'' (Preliminary Decision Memorandum) at 8–11.

[4] *Id.*

[5] *See Preliminary Results,* 78 FR at 15685.

[6] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, the United States Court of Appeals for the Federal Circuit upheld this decision. *See Tak Fat v. United States,* 396 F.3d 1378 (Fed. Cir. 2005).

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

**Final Determination Not To Rescind Review in Part**

In the *Preliminary Results,* consistent with its practice,[7] the Department stated its intent not to rescind the review for the following companies that remain a part of the PRC-wide entity: (1) China National Cereals, Oils & Foodstuffs Import & Export Corp.; (2) China Processed Food Import & Export Co.; (3) Fujian Pinghe Baofeng Canned Foods; (4) Fujian Yuxing Fruits and Vegetables Foodstuffs Development Co., Ltd.; (5) Fujian Zishan Group Co., Ltd.; (6) Guangxi Eastwing Trading Co., Ltd.; (7) Inter-Foods (Dongshan) Co., Ltd.; (8) Longhai Guangfa Food Co., Ltd.; (9) Primera Harvest (Xiangfan) Co., Ltd.; (10) Shandong Fengyu Edible Fungus Corporation Ltd.; (11) Sun Wave Trading Co., Ltd.; (12) Xiamen Greenland Import & Export Co., Ltd.; (13) Xiamen Gulong Import & Export Co., Ltd.; (14) Xiamen Jiahua Import & Export Trading Co., Ltd.; (15) Xiamen Longhuai Import & Export Co., Ltd.; (16) Zhangzhou Long Mountain Food Co., Ltd.; and (17) Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd.[8] At that time, we explained that, although the Department received withdrawal of review requests for these companies, we would not rescind the reviews because the PRC-wide entity remains under review.[9] Since the *Preliminary Results,* the Department has not received any information that would cause it to revisit its preliminary determination not to rescind the review with respect to these companies. Accordingly, consistent with its practice, the Department will issue appropriate instructions to U.S. Customs and Border Protection (CBP) for any entries made by these companies during the period of review (POR).

**Final Determination of No Shipments**

In the *Preliminary Results,* consistent with its practice, the Department stated its intent to continue the review of the following companies that claimed no reviewable transactions during the POR: (1) Guangxi Hengyong Industrial & Commercial Dev., Ltd. (Guangxi Hengyong); (2) Zhangzhou Tongfa Foods Industry Co., Ltd (Zhangzhou Tongfa); (3) Zhangzhou Hongda Import & Export Trading Co., Ltd. (Zhangzhou Hongda); and (4) Fujian Golden Banyan Foodstuffs Industrial Co., Ltd.[10] Subsequent to the *Preliminary Results,* no information was submitted on the record that would cause the Department to revisit its preliminary determination of no shipments by these companies. Accordingly, consistent with its practice,[11] the Department will issue appropriate instructions to CBP for any entries made by these companies during the POR.

**Final Results of Review**

The Department has determined that the following dumping margins exist for the period February 1, 2011, through January 31, 2012:

| Exporter | Weighted-average margin (percent) |
|---|---|
| Blue Field (Sichuan) Food Industrial Co., Ltd. | 102.11 |
| PRC-wide entity[12] | 308.33 |

**Disclosure**

We will disclose calculation memoranda used in our analysis to parties to this proceeding within five days of the date of publication of this notice pursuant to 19 CFR 351.224(b).

**Assessment Rates**

The Department has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[13] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

In accordance with 19 CFR 351.212(b)(1), we calculated importer-specific (or customer-specific) assessment rates for merchandise subject to this review for any individually examined respondents whose weighted-average dumping margin is above de minimis (*i.e.,* 0.5 percent).[14] Blue Field did not report entered values for its U.S. sales. Accordingly, we calculated a per-unit assessment rate for each of Blue Field's importers (or customers) by dividing the total dumping margins for reviewed sales to that importer by the kilogram weight of those transactions. For assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit dumping margin.

The Department recently announced a refinement to its assessment practice in non-market economy (NME) cases.[15] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under the exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[16]

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of subject merchandise entered or withdrawn from warehouse, for consumption, on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies subject to this review will be equal to the respective weighted-average dumping margin established in the final results of this review; (2) for previously investigated or reviewed companies not listed above that have their own rates, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the exporter participated; (3) for all other PRC exporters that have not been found to be entitled to a separate rate, the cash

[7] *See,* e.g., Handtrucks and Certain Parts Thereof from the People's Republic of China: Preliminary Results of the *2010–2011 Antidumping Duty Administrative Review,* 78 FR 1835 (January 9, 2013), and accompanying Preliminary Decision Memorandum at 3.

[8] The Department considers Zhangzhou Golden Banyan to be distinct from another company with a similar name for which a review was requested, Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. In the immediately-preceding review, the Department calculated a separate rate for Fujian Golden Banyan Foodstuffs Industrial Co., Ltd., while it considered Zhangzhou Golden Banyan to remain a part of the PRC-wide entity. *See Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 77 FR 55808 (September 11, 2012).

[9] *See Preliminary Results,* 77 FR at 15684–85.

[10] *Id.*

[11] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[12] The PRC-wide entity includes, among other companies: Dujiangyan Xingda Foodstuffs Co., Ltd., Zhejiang Iceman Group Co., Ltd., Ayecue (Liaocheng) Foodstuffs Co., Ltd., and Shandong Jiufa Edible Fungus Corporation, Ltd.

[13] *See* section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act); 19 CFR 351.212(b)(1).

[14] In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[15] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[16] *See id.*

deposit rate will be that for the PRC-wide entity (*i.e.,* 308.33 percent); and (4) for all non-PRC exporters of the subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied the non-PRC exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 30, 2013.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 2013–13431 Filed 6–5–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC684**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit application submitted by the Northeast Fisheries Science Center contains all of the required information and warrants further consideration. The Exempted Fishing Permit would exempt participating vessels from the following types of fishery regulations: Minimum fish size restrictions; fish possession limits; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions for the purpose of collecting fishery dependent catch data and biological samples.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on Exempted Fishing Permit applications.

**DATES:** Comments must be received on or before *June 21, 2013.*

**ADDRESSES:** You may submit written comments by any of the following methods:

- *Email: nero.efp@noaa.gov.* Include in the subject line ''Comments on NEFSC Study Fleet EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on NEFSC Study Fleet EFP.''
- *Fax:* (978) 281–9135.

**FOR FURTHER INFORMATION CONTACT:** Liz Sullivan, Fishery Management Specialist, 978–282–8493, *Liz.Sullivan@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Northeast Fisheries Science Center (NEFSC) submitted a complete application for an Exempted Fishing Permit (EFP) on April 11, 2013, to enable data collection activities that the regulations on commercial fishing would otherwise restrict. The EFP would exempt 29 federally permitted commercial fishing vessels from the regulations detailed below while participating in the Study Fleet Program and operating under projects managed by the NEFSC. The EFP would exempt participating vessels from minimum fish size restrictions; fish possession limits; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions for the purpose of at-sea sampling and, in limited situations for research purposes only, to retain and land fish.

The NEFSC Study Fleet Program was established in 2002 to more fully characterize commercial fishing operations and to leverage sampling opportunities to augment NMFS data collection programs. Participating vessels are contracted by NEFSC to collect tow by tow catch and environmental data, and to fulfill specific biological sampling needs identified by NEFSC. To collect these data, the NEFSC Study Fleet Program has obtained an EFP to secure the necessary waivers needed by the vessels to obtain fish that would otherwise be prohibited by regulations.

Crew trained by the NEFSC Study Fleet Program in methods that are consistent with the current NEFSC observer protocol, while under fishing operations, would sort, weigh, and measure fish that are to be discarded. An exemption from minimum fish size restrictions; fish possession limits; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions for at-sea sampling is required because some discarded species would be on deck slightly longer than under normal sorting procedures.

Participating vessels would also be authorized to retain and land, in limited situations for research purposes only, fish that do not comply with fishing regulations. The vessels would be authorized to retain specific amounts of particular species in whole or round weight condition, in marked totes, which would be delivered to Study Fleet Program technicians. The NEFSC would require participating vessels to obtain written approval from the NEFSC Study Fleet Program prior to landing any fish in excess of possession limits and/or below minimum size limits to ensure that the landed fish do not exceed any of the Study Fleet Program's collection needs, as detailed below. None of the landed biological samples from these trips would be sold for commercial use or used for any other purpose other than scientific research.

The table below details the regulations from which the participating vessels would be exempt when retaining and landing fish for research purposes. The participating vessels would be required to comply with all other applicable requirements and restrictions specified at 50 CFR part 648, unless specifically exempted in this EFP. All catch of stocks allocated to Sectors by vessels on a Sector trip would be deducted from the Sector's Annual Catch Entitlement (ACE) for each

Northeast multispecies stock regardless of what fishery the vessel was participating in when the fish was caught. Once a sector's ACE for a stock has been reached, vessels would no longer be allowed to fish in that stock area, unless they acquired additional ACE for the limiting stock. Non-sector vessels would be exempted from possession restriction as identified below in the table, but would still be subject to trimester total allowable catch (TAC) accountability measures applicable to non-sector vessels, which state that when 90 percent of the trimester TAC for a stock is projected to be caught, the area where that stock is predominantly caught will close to vessels fishing with a specific gear type for the rest of that trimester.

NEFSC Study Fleet Program EFP

| | |
|---|---|
| Number of Vessels | 29 |
| Exempted regulations in 50 CFR part 648 | *Size limits:*<br>§ 648.83 NE multispecies minimum size.<br>§ 648.93 Monkfish minimum fish size.<br>§ 648.104 Summer flounder minimum fish size.<br>§ 648.147 Black sea bass minimum fish size.<br>*Possession restrictions:*<br>§ 648.86(a) Haddock.<br>§ 648.86(b) Atlantic cod.<br>§ 648.86(g) Yellowtail flounder.<br>§ 648.86(j) Georges Bank winter flounder.<br>§ 648.86(l) Zero retention of Atlantic wolffish.<br>§ 648.86(o) Possession limits implemented by RA.<br>§ 648.94 Monkfish possession limit.<br>§ 648.106 Summer flounder possession restrictions.<br>§ 648.322 Skate possession and landing restrictions.<br>§ 648.145 Black sea bass possession limits.<br>§ 648.235 Spiny dogfish possession and landing restrictions. |

**NEFSC Study Fleet Program's Sampling Needs**

• Haddock—whole fish would be retained for maturity and fecundity research. The haddock retained would not exceed 30 fish per trip, or 360 fish for all trips. The maximum weight of haddock on any trip would not exceed 120 lb (54.43 kg) total weight per trip, and would not exceed 1,440 lb (653.17 kg) for all trips combined.

• Yellowtail Flounder—whole fish would be retained for maturity, fecundity, bioelectrical impedance analysis (BIA), food habits, and genetic research. The yellowtail flounder retained would not exceed 200 fish per month from each of the three stock areas (Gulf of Maine (GOM), Georges Bank (GB), Southern New England/Mid-Atlantic (SNE/MA)), or 1,200 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) total weight, and would not exceed 1,500 lb (680.39 kg) for all trips combined.

• Summer Flounder—whole fish would be retained for maturity, fecundity, BIA, food habits, and genetic research. The summer flounder retained would not exceed 200 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,200 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 150 lb (68.04 kg) total weight, and would not exceed 4,500 lb (2,041.17 kg) for all trips combined.

• Winter Flounder—whole fish would be retained for maturity, fecundity, BIA, food habits, and genetic research. The winter flounder retained would not exceed 200 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,200 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 3,000 lb (1,360.78 kg) for all trips combined.

• Spiny Dogfish—whole fish would be retained for reproductive biology research. The spiny dogfish retained would not exceed 60 fish per month from each of the two stock areas (GOM, SNE/MA), or 720 fish total for all trips. The maximum weight on any trip would not exceed 350 lb (158.76 kg), and would not exceed 4,200 lb (1,905.09 kg) total for all trips.

• Monkfish—whole fish would be retained for maturity and fecundity research. Monkfish retained would not exceed 10 fish per trip, or 120 fish total for all trips. The maximum weight on any trip would not exceed 100 lb (45.36 kg) total weight, and would not exceed 1,200 lb (544.31 kg) for all trips combined.

• Cod—whole fish would be retained for maturity, fecundity, BIA, food habits, and genetic research. Cod to be retained would not exceed 200 fish per month from each of the three stock areas (GOM, GB, SNE/MA), or 1,200 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 300 lb (136.08 kg) total weight, and would not exceed 8,500 lb (3,855.54 kg) for all trips combined.

• Barndoor Skate—whole and, in some cases, live skates would be retained for age and growth research and species confirmation. The barndoor skates retained would not exceed 20 fish per 3-month period, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) total weight, and would not exceed 300 lb (136.08 kg) total for all trips combined.

• Thorny Skate—whole and, in some cases, live skates would be retained for age and growth research and species confirmation. Thorny skates retained would not exceed 20 fish per 3-month period, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34.02 kg) whole weight, and would not exceed 300 lb (136.08 kg) total for all trips combined.

• Black Sea Bass—whole fish would be retained for examination of seasonal and latitudinal patterns in energy allocation. This effort is in support of an ongoing study at the NEFSC to evaluate BIA to measure fish energy density and reproductive potential for stock assessment. Black sea bass retained would not exceed 75 fish per trip or 300 black sea bass total for all trips. The maximum weight on any trip would not exceed 250 lb (113.40 kg) total weight, and would not exceed 1,000 lb (453.59 kg) total for all trips combined.

• Atlantic wolffish—whole fish would be retained for maturity, fecundity, and life history research. Atlantic wolffish retained would not exceed 30 fish per month or 360 fish

total for all trips. The maximum weight on any trip would not exceed 120 lb (54.4 kg) and would not exceed 3,000 lb (1,360.8 kg) total for all trips combined.

• Cusk—whole fish would be retained for maturity, fecundity, and life history research. Cusk retained would not exceed 30 fish per month or 360 fish total for all trips. The maximum weight on any trip would not exceed 100 lb (45.4 kg) and would not exceed 2,300 lb (1,043.3 kg) total for all trips combined.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impact that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 3, 2013.

**Kara Meckley,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–13450 Filed 6–5–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–BD32**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Fishery Management Plan for the Exclusive Economic Zone of Puerto Rico

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent (NOI) to prepare a draft environmental impact statement (DEIS); scoping meetings; request for comments.

**SUMMARY:** NMFS, Southeast Region, in collaboration with the Caribbean Fishery Management Council (Council), intends to prepare a DEIS to describe and analyze a range of management alternatives for management actions to be considered when developing and establishing a Comprehensive Fishery Management Plan (FMP) for the exclusive economic zone (EEZ) of Puerto Rico. The purpose of this NOI is to inform the public of upcoming opportunities to provide comments on the actions to be addressed in the DEIS, as specified in this notice.

**DATES:** Written comments on the scope of issues to be addressed in the DEIS must be received by NMFS by July 8, 2013. The scoping meetings will be held in July 2013. For specific dates and times, see **SUPPLEMENTARY INFORMATION**, under the heading, ''Scoping Meetings''.

**ADDRESSES:** You may submit comments on the DEIS, identified by ''NOAA–NMFS–2013–0093'', by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0093,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Miguel Lugo, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or to the Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the scoping document may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/island_based/index.html.*

The scoping meetings will be held in Puerto Rico and in the U.S. Virgin Islands. For specific locations, see **SUPPLEMENTARY INFORMATION**, under the heading, ''Scoping Meetings''.

**FOR FURTHER INFORMATION CONTACT:** Miguel Lugo, phone 727–824–5305, email *Miguel.Lugo@noaa.gov;* or Graciela Garcia-Moliner, phone 787–766–5927, email *Graciela.Garcia-Moliner@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Currently, the Council manages Federal fisheries in the U.S. Caribbean under four species-based FMPs: The Spiny Lobster FMP of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP), the Reef Fish FMP of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP), the Corals and Reef Associated Plants and Invertebrates FMP of Puerto Rico and the U.S. Virgin Islands (Coral FMP), and the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (Queen Conch FMP). The fishers, fishing community representatives, and the local governments of Puerto Rico and the U.S. Virgin Islands (USVI) have frequently requested the Council consider the differences between the islands or island groups when addressing fisheries management in the U.S. Caribbean to recognize the unique attributes of each U.S. Caribbean island. By developing island-based FMPs, NMFS and the Council would better account for differences among the U.S. Caribbean islands with respect to culture, markets, gear, seafood preferences, and the ecological impacts that result from these differences.

At its 145th meeting, held on March 26–27, 2013, the Council decided to transition from species-based fisheries management to island-based fisheries management. If approved, a comprehensive FMP for fisheries management off Puerto Rico, in conjunction with similar comprehensive FMPs for fisheries management off St. Croix and off St. Thomas/St. John, would replace the existing species-based FMPs.

Also at its March meeting, the Council voted to hold scoping meetings in July 2013 to receive public feedback on possible actions and alternatives to consider during the development of the Puerto Rico FMP, the St. Croix FMP, and the St. Thomas/St. John FMP. The Council could develop the comprehensive FMPs without significant changes to current Federal fisheries management. For example, the 2010 Caribbean Annual Catch Limit (ACL) Amendment (76 FR 82404, December 30, 2011) and the 2011 Caribbean ACL Amendment (76 FR 82414, December 30, 2011) established ACLs by island or island group with specific ACLs for the Puerto Rico EEZ. The spatial and species-based attributes of these Puerto Rico ACLs, more than likely, would not change when developing the new FMP.

However, a re-arrangement from species-based FMPs to island-based FMPs also provides an opportunity for the Council to update management regulations that are outdated or do not reflect the current state of issues in the Puerto Rico EEZ. In the comprehensive Puerto Rico FMP, the Council is

considering management measures to modify the composition of the fishery management units (FMUs) by adding or removing species, establishing management reference points for any new species added into the FMUs, and modifying or establishing additional management measures. If regulations are to be changed, additional analyses to assess the impacts to the social, biological, economic, ecological, and administrative environments will be required.

To implement the proposed provisions of this new FMP, the Council will develop a DEIS for the comprehensive Puerto Rico FMP that describes and analyzes the proposed management alternatives. The new FMP will provide the best available scientific information regarding the management of Puerto Rico fisheries, within the context of Federal fisheries management in the U.S. Caribbean. Those alternatives will include, but are not limited to, a ''no action'' alternative regarding the continuation of species-based Federal fishery management in Puerto Rico, as well as alternatives to revise the management of U.S. Caribbean fisheries when developing the comprehensive Puerto Rico FMP. In addition, there will be alternatives to modify the current FMUs including, but not limited to, the ''no action'' alternative. Other actions could be included in the DEIS in response to public feedback during the scoping process.

In accordance with NOAA's Administrative Order NAO 216–6, Section 5.02(c), the Council and NMFS have identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the DEIS.

After the DEIS associated with the development of the Comprehensive Puerto Rico FMP is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council and NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the FMP to NMFS for Secretarial review, approval, and implementation.

NMFS will announce in the **Federal Register** the availability of the FMP for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FEIS with the EPA for a final 30-day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the FMP.

NMFS will announce in the **Federal Register**, all public comment periods on the FMP, its proposed implementing regulations, and the associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the FMP, the proposed regulations, or the FEIS, prior to final agency action.

### Scoping Meetings

All scoping meetings are scheduled for the week of July 8, 2013 (start times and locations are specified below). Participants at the scoping meetings may comment on any of the island-based FMPs (the Puerto Rico FMP, the St. Croix FMP, and the St. Thomas/St. John FMP) during any of the scoping meetings. The meetings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to the Council (see **ADDRESSES**).

### Island-Based Scoping Hearings in Puerto Rico (Monday–Friday)

July 8, 2013 7 p.m.—at the Centro de Usos Multiples de Vieques, Calle Antonio G. Mellado, Vieques, Puerto Rico.

July 9, 2013 7 p.m.—at the Double Tree by Hilton San Juan, De Diego Avenue, San Juan, Puerto Rico.

July 10, 2013 2 p.m.—at the Holiday Inn Ponce & Tropical Casino, 3315 Ponce By Pass, Ponce, Puerto Rico.

July 10, 2013 7 p.m.—at the Holiday Inn, 2701 Hostos Avenue, Mayaguez, Puerto Rico.

July 11, 2013 7 p.m.—at the Asociacion de Pescadores Unidos de Playa Hucares in Naguabo, Puerto Rico.

July 12, 2013 6 p.m.—at the Club Nautico de Arecibo, Carr, 681 Km. 1.4, Barrio Islote, Sector Vigia, Arecibo, Puerto Rico.

### Island-Based Scoping Hearings in the USVI (Tuesday–Wednesday)

July 9, 2013 7 p.m.—at the Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, U.S. Virgin Islands.

July 10, 2013 7 p.m.—at the Holiday Inn (Windward Passage Hotel) Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 3, 2013.

**Kara Meckley,**

*Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–13440 Filed 6–5–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–BD34**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Fishery Management Plan for the Exclusive Economic Zone of St. Thomas/St. John

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent (NOI) to prepare a draft environmental impact statement (DEIS); scoping meetings; request for comments.

**SUMMARY:** NMFS, Southeast Region, in collaboration with the Caribbean Fishery Management Council (Council), intends to prepare a DEIS to describe and analyze a range of management alternatives for management actions to be considered when developing and establishing a Comprehensive Fishery Management Plan (FMP) for the exclusive economic zone (EEZ) of St. Thomas/St. John. The purpose of this NOI is to inform the public of upcoming opportunities to provide comments on the actions to be addressed in the DEIS, as specified in this notice.

**DATES:** Written comments on the scope of issues to be addressed in the DEIS must be received by NMFS by July 8, 2013. The scoping meetings will be held in July 2013. For specific dates and times, see **SUPPLEMENTARY INFORMATION**, under the heading, ''Scoping Meetings''.

**ADDRESSES:** You may submit comments on the DEIS, identified by ''NOAA–NMFS–2013–0094'', by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the

Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0094,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Miguel Lugo, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or to the Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the scoping document may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/island_based/index.html.*

The scoping meetings will be held in Puerto Rico and in the U.S. Virgin Islands. For specific locations, see **SUPPLEMENTARY INFORMATION**, under the heading, ''Scoping Meetings''.

**FOR FURTHER INFORMATION CONTACT:** Miguel Lugo, phone 727–824–5305, email *Miguel.Lugo@noaa.gov;* or Graciela Garcia-Moliner, phone 787–766–5927, email *Graciela.Garcia-Moliner@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Currently, the Council manages Federal fisheries in the U.S. Caribbean under four species-based FMPs: the Spiny Lobster FMP of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP), the Reef Fish FMP of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP), the Corals and Reef Associated Plants and Invertebrates FMP of Puerto Rico and the U.S. Virgin Islands (Coral FMP), and the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (Queen Conch FMP). The fishers, fishing community representatives, and the local governments of Puerto Rico and the U.S. Virgin Islands (USVI) have frequently requested the Council consider the differences between the islands or island groups when addressing fisheries management in the U.S. Caribbean to recognize the unique attributes of each U.S. Caribbean island. By developing island-based FMPs, NMFS and the Council would better account for differences among the U.S. Caribbean islands with respect to culture, markets, gear, seafood preferences, and the ecological impacts that result from these differences.

At its 145th meeting, held on March 26–27, 2013, the Council decided to transition from species-based fisheries management to island-based fisheries management. If approved, a comprehensive FMP for fisheries management off St. Thomas/St. John, in conjunction with similar comprehensive FMPs for fisheries management off Puerto Rico and off St. Croix, would replace the existing species-based FMPs.

Also at its March meeting, the Council voted to hold scoping meetings in July 2013 to receive public feedback on possible actions and alternatives to consider during the development of the St. Thomas/St. John FMP, the Puerto Rico FMP, and the St. Croix FMP. The Council could develop the comprehensive FMPs without significant changes to current Federal fisheries management. For example, the 2010 Caribbean Annual Catch Limit (ACL) Amendment (76 FR 82404, December 30, 2011) and the 2011 Caribbean ACL Amendment (76 FR 82414, December 30, 2011) established ACLs by island or island group with specific ACLs for the St. Thomas/St. John EEZ. The spatial and species-based attributes of these St. Thomas/St. John ACLs, more than likely, would not change when developing the new FMP.

However, a re-arrangement from species-based FMPs to island-based FMPs also provides an opportunity for the Council to update management regulations that are outdated or do not reflect the current state of issues in the St. Thomas/St. John EEZ. In the comprehensive St. Thomas/St. John FMP, the Council is considering management measures to modify the composition of the fishery management units (FMUs) by adding or removing species, establishing management reference points for any new species added into the FMUs, and modifying or establishing additional management measures. If regulations are to be changed, additional analyses to assess the impacts to the social, biological, economic, ecological, and administrative environments will be required.

To implement the proposed provisions of this new FMP, the Council will develop a DEIS for the comprehensive St. Thomas/St. John FMP that describes and analyzes the proposed management alternatives. The new FMP will provide the best available scientific information regarding the management of St. Thomas/St. John EEZ fisheries, within the context of Federal fisheries management in the U.S. Caribbean. Those alternatives will include, but are not limited to, a ''no action'' alternative regarding the continuation of species-based Federal fishery management in St. Thomas/St. John, as well as alternatives to revise the management of U.S. Caribbean fisheries when developing the comprehensive St. Thomas/St. John FMP. In addition, there will be alternatives to modify the current FMUs including, but not limited to, the ''no action'' alternative. Other actions could be included in the DEIS in response to public feedback during the scoping process.

In accordance with NOAA's Administrative Order NAO 216–6, Section 5.02(c), the Council and NMFS have identified preliminary environmental issues as a means to initiate discussion for scoping purposes only. These preliminary issues may not represent the full range of issues that eventually will be evaluated in the DEIS.

After the DEIS associated with the development of the Comprehensive St. Thomas/St. John FMP is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council and NMFS will consider public comments received on the DEIS in developing the final environmental impact statement (FEIS), and before voting to submit the FMP to NMFS for Secretarial review, approval, and implementation.

NMFS will announce in the **Federal Register** the availability of the FMP for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FEIS with the EPA for a final 30-day public comment period. This comment period will be concurrent with the Secretarial

review period and will end prior to final agency action to approve, disapprove, or partially approve the FMP.

NMFS will announce in the **Federal Register**, all public comment periods on the FMP, its proposed implementing regulations, and the associated FEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the FMP, the proposed regulations, or the FEIS, prior to final agency action.

**Scoping Meetings**

All scoping meetings are scheduled for the week of July 8, 2013 (start times and locations are specified below). Participants at the scoping meetings may comment on any of the island-based FMPs (the Puerto Rico FMP, the St. Croix FMP, and the St. Thomas/St. John FMP) during any of the scoping meetings. The meetings will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to the Council (see **ADDRESSES**).

**Island-Based Scoping Hearings in Puerto Rico (Monday–Friday)**

July 8, 2013 7 p.m.—at the Centro de Usos Multiples de Vieques, Calle Antonio G. Mellado, Vieques, Puerto Rico.

July 9, 2013 7 p.m.—at the Double Tree by Hilton San Juan, De Diego Avenue, San Juan, Puerto Rico.

July 10, 2013 2 p.m.—at the Holiday Inn Ponce & Tropical Casino, 3315 Ponce By Pass, Ponce, Puerto Rico.

July 10, 2013 7 p.m.—at the Holiday Inn, 2701 Hostos Avenue, Mayaguez, Puerto Rico.

July 11, 2013 7 p.m.—at the Asociacion de Pescadores Unidos de Playa Hucares in Naguabo, Puerto Rico.

July 12, 2013 6 p.m.—at the Club Nautico de Arecibo, Carr, 681 Km. 1.4, Barrio Islote, Sector Vigia, Arecibo, Puerto Rico.

**Island-Based Scoping Hearings in the USVI (Tuesday–Wednesday)**

July 9, 2013 7 p.m.—at the Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, U.S. Virgin Islands.

July 10, 2013 7 p.m.—at the Holiday Inn (Windward Passage Hotel) Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 3, 2013.

**Kara Meckley,**

*Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–13433 Filed 6–5–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–BD33**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Fishery Management Plan for the Exclusive Economic Zone (EEZ) of St. Croix

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent (NOI) to prepare a draft environmental impact statement (DEIS); scoping meetings; request for comments.

**SUMMARY:** NMFS, Southeast Region, in collaboration with the Caribbean Fishery Management Council (Council), intends to prepare a DEIS to describe and analyze a range of management alternatives for management actions to be considered when developing and establishing a Comprehensive Fishery Management Plan (FMP) for the exclusive economic zone (EEZ) of St. Croix. The purpose of this NOI is to inform the public of upcoming opportunities to provide comments on the actions to be addressed in the DEIS, as specified in this notice.

**DATES:** Written comments on the scope of issues to be addressed in the DEIS must be received by NMFS by July 8, 2013. The scoping meetings will be held in July 2013. For specific dates and times, see **SUPPLEMENTARY INFORMATION**, under the heading, ''Scoping Meetings''.

**ADDRESSES:** You may submit comments on the DEIS, identified by ''NOAA–NMFS–2013–0092'', by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0092,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Miguel Lugo, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or to the Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the scoping document may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/island_based/index.html.*

The scoping meetings will be held in Puerto Rico and in the U.S. Virgin Islands. For specific locations, see **SUPPLEMENTARY INFORMATION**, under the heading, ''Scoping Meetings''.

**FOR FURTHER INFORMATION CONTACT:** Miguel Lugo, phone 727–824–5305, email *Miguel.Lugo@noaa.gov;* or Graciela Garcia-Moliner, phone 787–766–5927, email *Graciela.Garcia-Moliner@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Currently, the Council manages Federal fisheries in the U.S. Caribbean under four species-based FMPs: the Spiny Lobster FMP of Puerto Rico and the U.S. Virgin Islands (Spiny Lobster FMP), the Reef Fish FMP of Puerto Rico and the U.S. Virgin Islands (Reef Fish FMP), the Corals and Reef Associated Plants and Invertebrates FMP of Puerto Rico and the U.S. Virgin Islands (Coral FMP), and the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (Queen Conch FMP). The fishers, fishing community representatives, and the local governments of Puerto Rico and the U.S. Virgin Islands (USVI) have frequently requested the Council consider the differences between the islands or island groups when addressing fisheries management in the U.S. Caribbean to recognize the unique attributes of each U.S. Caribbean island. By developing island-based FMPs, NMFS and the Council would better account for differences among the U.S. Caribbean islands with respect to culture, markets, gear, seafood

preferences, and the ecological impacts that result from these differences.

At its 145th meeting, held on March 26–27, 2013, the Council decided to transition from species-based fisheries management to island-based fisheries management. If approved, a comprehensive FMP for fisheries management off St. Croix, in conjunction with similar comprehensive FMPs for fisheries management off Puerto Rico and off St. Thomas/St. John, would replace the existing species-based FMPs.

Also at its March meeting, the Council voted to hold scoping meetings in July 2013 to receive public feedback on possible actions and alternatives to consider during the development of the St. Croix FMP, the Puerto Rico FMP, and the St. Thomas/St. John FMP. The Council could develop the comprehensive FMPs without significant changes to current Federal fisheries management. For example, the 2010 Caribbean Annual Catch Limit (ACL) Amendment (76 FR 82404, December 30, 2011) and the 2011 Caribbean ACL Amendment (76 FR 82414, December 30, 2011) established ACLs by island or island group with specific ACLs for the St. Croix EEZ. The spatial and species-based attributes of these St. Croix ACLs, more than likely, would not change when developing the new FMP.

However, a re-arrangement from species-based FMPs to island-based FMPs also provides an opportunity for the Council to update management regulations that are outdated or do not reflect the current state of issues in the St. Croix EEZ. In the comprehensive St. Croix FMP, the Council is considering management measures to modify the composition of the fishery management units (FMUs) by adding or removing species, establishing management reference points for any new species added into the FMUs, and modifying or establishing additional management measures. If regulations are to be changed, additional analyses to assess the impacts to the social, biological, economic, ecological, and administrative environments will be required.

To implement the proposed provisions of this new FMP, the Council will develop a DEIS for the comprehensive St. Croix FMP that describes and analyzes the proposed management alternatives. The new FMP will provide the best available scientific information regarding the management of St. Croix EEZ fisheries, within the context of Federal fisheries management in the U.S. Caribbean. Those alternatives will include, but are not limited to, a ''no action'' alternative regarding the continuation of species-based Federal fishery management in St. Croix, as well as alternatives to revise the management of U.S. Caribbean fisheries when developing the comprehensive St. Croix FMP. In addition, there will be alternatives to modify the current FMUs including, but not limited to, the ''no action'' alternative. Other actions could be included in the DEIS in response to public feedback during the scoping process.

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After the DEIS associated with the development of the Comprehensive St. Croix FMP is completed, it will be filed with the Environmental Protection Agency (EPA). After filing, the EPA will publish a notice of availability of the DEIS for public comment in the **Federal Register**. The DEIS will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

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July 11, 2013 7 p.m.—at the Asociacion de Pescadores Unidos de Playa Hucares in Naguabo, Puerto Rico.

July 12, 2013 6 p.m.—at the Club Nautico de Arecibo, Carr, 681 Km. 1.4, Barrio Islote, Sector Vigia, Arecibo, Puerto Rico.

*Island-Based Scoping Hearings in the USVI (Tuesday–Wednesday)*

July 9, 2013 7 p.m.—at the Buccaneer Hotel, Estate Shoys, Christiansted, St.Croix, U.S. Virgin Islands.

July 10, 2013 7 p.m.—at the Holiday Inn (Windward Passage Hotel) Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 3, 2013.

**Kara Meckley,**

*Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–13441 Filed 6–5–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC708**

### Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of SEDAR Data/Assessment Workshop for Highly Migratory Species (HMS) Atlantic Sharpnose and Bonnethead sharks.

**SUMMARY:** The SEDAR assessment of the HMS stocks of Atlantic Sharpnose and Bonnethead sharks will consist of one workshop and a series of Webinars. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR Workshop will be held from 9 a.m. on June 25, 2013 until 6 p.m. on June 27, 2013. See **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The Workshop will be held at Wyndham Bay Point Resort, 4114 Jan Cooley Drive, Panama City Beach, FL 32408; telephone: (850) 236–6000.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie Neer, SEDAR Coordinator; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *Julie.neer@safmc.net*.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop; and (2) a series of Webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Data/Assessment Workshop are as follows:

1. An assessment data set and associated documentation will be developed.

2. Participants will evaluate proposed data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

3. Using datasets selected, participants will develop population models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

4. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

5. Participants will prepare a workshop report, document the data incorporated as well as the decisions made during the process, and complete results of the assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

**Note:** The times and sequence specified in this agenda are subject to change.

Dated: June 3, 2013.

**William D. Chappell,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–13386 Filed 6–5–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC707**

### Caribbean Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Caribbean Fishery Management Council's Outreach and Education Advisory Panel (OEAP) will hold a meeting.

**DATES:** The OEAP meeting will be held on June 26, 2013, from 10 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the CFMC Offices, 270 Muñoz Rivera Avenue, 4th Floor, Suite 401, San Juan, Puerto Rico.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The OEAP will meet to discuss the items contained in the following agenda:

**10 a.m.–5 p.m**

- Call to Order
- Adoption of Agenda
- OEAP Chairperson's Report
- Status of:
  - Newsletter
  - Web site
  - 2014 Calendar
  - CFMC Brochure
  - St. Croix *Fuete y Verguilla* issue
  - USVI activities
    - Lía Ortiz presentation
  - PR Commercial Fisheries Project
    - Helena Antoun presentation
  - Caribbean Fisheries Teacher's Resource Book
- Participation in Managing Our Nation Fisheries 3
- Presentation to St. Thomas Legislators
- Presentation to DNER Secretary
- Other Business

The OEAP will convene on June 26, 2013, from 10 a.m. until 5 p.m.

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are

invited to attend and participate with oral or written statements regarding agenda issues.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: May 31, 2013.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–13369 Filed 6–5–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC497**

### Takes of Marine Mammals Incidental to Specified Activities; Navy Research, Development, Test and Evaluation Activities at the Naval Surface Warfare Center Panama City Division

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; proposed Incidental Harassment Authorization; request for comments.

**SUMMARY:** NMFS has received an application from the U.S. Navy (Navy) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting research, development, test and evaluation (RDT&E) activities at the Naval Surface Warfare Center Panama City Division (NSWC PCD). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the Navy to incidentally harass, by Level B harassment only, 6 species of marine mammals during the specified activity.

**DATES:** Comments and information must be received no later than July 8, 2013.

**ADDRESSES:** Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Goldstein@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

The Navy has prepared an ''Overseas Environmental Assessment Testing the An/AQS–20A Mine Reconnaissance Sonar System in the NSWC PCD Testing Range, 2012–2014,'' which is also available at the same internet address. NMFS has prepared an ''Environmental Assessment for the Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducing High-Frequency Sonar Testing Activities in the Naval Surface Warfare Center Panama City Division'' and signed a Finding of No Significant Impact (FONSI) on July 24, 2012, prior to the issuance of the IHA for the Navy's activities in July 2012 to July 2013. This notice and the documents it references provide all relevant environmental information and issues related to the Navy's activities and the proposed IHA. NMFS is soliciting comments which it will consider in determining whether to supplement the original EA and reaffirm the FONSI before making a final determination on the IHA. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA, as amended (16 U.S.C. 1361(a)(5)(D)), direct the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as: ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or

(ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

**Summary of Request**

On November 26, 2012, NMFS received an application from the Navy requesting that NMFS issue an IHA for the take, by Level B harassment only, of marine mammals incidental to conducting testing of the AN/AQS–20A Mine Reconnaissance Sonar System (hereafter referred to as the Q–20) in the Naval Surface Warfare Center, Panama City Division (NSWC PCD) testing range in the Gulf of Mexico (GOM) from July, 2013 through July, 2014. The Q–20 sonar test activities are proposed to be conducted within the U.S. Exclusive Economic Zone (EEZ) seaward of the territorial waters of the United States (beyond 22.2 kilometers [km] or 12 nautical miles [nmi]) in the GOM (see Figure 2–1 of the Navy IHA application).

**Description of the Proposed Specific Activity**

The purpose of the Navy's activities is to meet the developmental testing requirements of the Q–20 sonar system by verifying its performance in a realistic ocean and threat environment and supporting its integration with the Remote Multi-Mission Vehicle (RMMV), and ultimately the Littoral Combat Ship (LCS). Testing would include component, subsystem-level, and full-scale system testing in an operational environment. The need for the proposed activities is to support the timely deployment of the Q–20 to the operational Navy for Mine Countermeasure (MCM) activities abroad, allowing the Navy to meet its statutory mission to deploy naval forces equipped and trained to meet existing and emergent threats worldwide and to enhance its ability to operate jointly with other components of the armed forces. Testing would include component, sub-system level, and full-scale system testing in the operational environment.

The proposed activities are to test the Q–20 from the RMMV and from surrogate platforms such as a small surface vessel or helicopter. The RMMV or surrogate platforms will be deployed from the Navy's new LCS or its surrogates. The Navy is evaluating potential environmental effects associated with the Q–20 test activities proposed for the Q–20 Study Area (see below for detailed description of the Study Area), which includes non-territorial waters of Military Warning Area 151 (W–151; includes Panama City Operating Area [OPAREA]). Q–20 test activities occur at sea in the waters present within the Q–20 study area and do not involve any land-based facilities. No hazardous waste is generated at sea during Q–20 test activities. There are two components associated with the Q–20 test activities, which are addressed below:

*Surface Operations*

A significant portion of Q–20 test activities rely on surface operations (i.e., naval and contracted vessels, towed bodies, etc.) to successfully complete the missions. The proposed action includes up to 42 testing events lasting no more than 10 hours each (420 hours cumulatively) of surface operations during active sonar testing per year in the Q–20 study area. Other surface operations occur when sonar is not active. Three subcategories make up surface operations: Support activities; tows; and vessel activity during deployment and recovery of equipment. Testing requiring surface operations may include a single test event (one day of activity) or a series of test events spread out over several days. The size of the surface vessels varies in accordance with the test requirements and vessel availability. Often multiple surface craft are required to support a single test event.

The first subcategory of surface operations is support activities that are required by nearly all of the Q–20 test missions within the Q–20 study area. These surface vessels serve as support platforms for testing and would be utilized to carry test equipment and personnel to and from the test sites, and are also used to secure and monitor the designated test area. Normally, these vessels remain on site and return to port following the completion of the test event; occasionally; however, they occasionally remain on station throughout the duration of the test cycle (a maximum of 10 hours of sonar per day) for guarding sensitive equipment in the water.

Additional surface operations include tows, and vessel activity during deployment and recovery of equipment. Tows involve either transporting the system to the designated test area where it is deployed and towed over a pre-positioned inert minefield or towing the system from shore-based facilities for operation in the designated test area. Surface vessels are also used to perform the deployment and recovery of the RMMV, mine-like objects, and other test systems. Surface vessels that are used in this manner normally return to port the same day. However, this is test dependent, and under certain circumstance the surface vessel may be required to remain on site for an extended period of time.

*Sonar Operations*

For the proposed action, the Navy would test the Q–20 for up to 420 hours of active sonar use for 12 months starting in July, 2013. Q–20 sonar operations involve the testing of various sonar systems at sea as a means of demonstrating the systems' software capability to detect, locate, and characterize mine-like objects under various environmental conditions. The data collected are used to validate the sonar systems' effectiveness and capability to meet its mission.

As sound travels through water, it creates a series of pressure disturbances (see Appendix C of the IHA application). Frequency is the number of complete cycles a sound or pressure wave occurs per unit of time (measured in cycles per second, or Hertz (Hz)). The Navy has characterized low-, mid-, or high-frequency active sonars as follows:

- Low-frequency active sonar (LFAS)—Below 1 kilohertz (kHz) (low-frequency sound sources will not be used during any Q–20 test operations)
- Mid-frequency active sonar (LFAS)—From 1 to 10 kHz (mid-frequency source sources will not be used during any Q–20 test operations)
- High-frequency active sonar (HFAS)—Above 10 kHz (only high-frequency sound sources would be used during Q–20 test operations)

The Q–20 sonar systems proposed to be tested within the Q–20 study area ranges in frequencies from 35 kHz to greater than 200 kHz, therefore, these are HFAS systems. Those systems that operate at very high frequencies (i.e., greater than 200 kHz), well above the hearing sensitivities of any marine mammals, are not considered to affect marine mammals. Therefore, they are not included in this document. The source levels associated with Q–20 sonar systems that could affect marine mammals range from 207 decibels (dB) re 1 micro pascal (μPa) at 1 meter (m) to 212 dB re 1 μPa at 1 m. Operating parameters of the Q–20 sonar systems can be found in Appendix A, ''Supplemental Information for Underwater Noise Analysis'' of the Navy's IHA application.

*A Brief Background on Sound*

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. A summary is included below.

Sound is a wave of pressure variations propagating through a medium (for the sonar considered in this proposed rule, the medium is marine water). Pressure

variations are created by compressing and relaxing the medium. Sound measurements can be expressed in two forms: intensity and pressure. Acoustic intensity is the average rate of energy transmitted through a unit area in a specified direction and is expressed in watts per square meter ($W/m^2$). Acoustic intensity is rarely measured directly, it is derived from ratios of pressures; the standard reference pressure for underwater sound is 1 µPa; for airborne sound, the standard reference pressure is 20 µPa (Urick, 1983).

Acousticians have adopted a logarithmic scale for sound intensities, which is denoted in decibels (dB). Decibel measurements represent the ratio between a measured pressure value and a reference pressure value (in this case 1 µPa or, for airborne sound, 20 µPa). The logarithmic nature of the scale means that each 10 dB increase is a tenfold increase in power (e.g., 20 dB is a 100-fold increase, 30 dB is a 1,000-fold increase). Humans perceive a 10-dB increase in noise as a doubling of sound level, or a 10 dB decrease in noise as a halving of the sound level. The term ''sound pressure level'' implies a decibel measure and a reference pressure that is used as the denominator of the ratio. Throughout this document, NMFS uses 1 µPa as a standard reference pressure unless noted otherwise.

It is important to note that decibels underwater and decibels in air are not the same and cannot be directly compared. To estimate a comparison between sound in air and underwater, because of the different densities of air and water and the different decibel standards (i.e., reference pressures) in water and air, a sound with the same intensity (i.e., power) in air and in water would be approximately 63 dB lower in air. Thus, a sound that is 160 dB loud underwater would have the same approximate effective intensity as a sound that is 97 dB loud in air.

Sound frequency is measured in cycles per second, or Hertz (abbreviated Hz), and is analogous to musical pitch; high-pitched sounds contain high frequencies and low-pitched sounds contain low frequencies. Natural sounds in the ocean span a huge range of frequencies: from earthquake noise at 5 Hz to harbor porpoise clicks at 150,000 Hz (150 kHz). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic and ultrasonic sounds, respectively. A single sound may be made up of many different frequencies together. Sounds made up of only a small range of frequencies are called ''narrowband,'' and sounds with a broad range of frequencies are called ''broadband;'' airguns are an example of a broadband sound source and tactical sonars are an example of a narrowband sound source.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' and estimate the lower and upper frequencies of functional hearing of the groups. Further, the frequency range in which each group's hearing is estimated as being most sensitive is represented in the flat part of the M-weighting functions developed for each group. The functional groups and the associated frequencies are indicated below:

- Low-frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz.
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz.
- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia,* the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz.
- Pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.
- Pinnipeds in Air: Functional hearing is estimated to occur between approximately 75 Hz and 30 kHz.

Because ears adapted to function underwater are physiologically different from human ears, comparisons using decibel measurements in air would still not be adequate to describe the effects of a sound on a whale. When sound travels away from its source, its loudness decreases as the distance traveled (propagates) by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound a kilometer distant. Acousticians often refer to the loudness of a sound at its source (typically measured one meter from the source) as the source level and the loudness of sound elsewhere as the received level. For example, a humpback whale three kilometers from an airgun that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound propagates. As a result, it is important not to confuse source levels and received levels when discussing the loudness of sound in the ocean.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

*Metrics Used in This Document*

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used in the discussions of acoustic effects in this document.

*Sound Pressure Level*

Sound pressure is the sound force per unit area, and is usually measured in microPa, where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one square meter. SPL is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 µPa, and the units for SPLs are dB re: 1 µPa.

SPL (in dB) = 20 log (pressure/reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions

of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square. SPL does not take the duration of a sound into account. SPL is the applicable metric used in the risk continuum, which is used to estimate behavioral harassment takes (see Level B Harassment Risk Function [Behavioral Harassment] Section).

*Sound Exposure Level*

SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 microPa$^2$ − s.

SEL = SPL + 10 log (duration in seconds)

As applied to tactical sonar, the SEL includes both the SPL of a sonar ping and the total duration. Longer duration pings and/or pings with higher SPLs will have a higher SEL. If an animal is exposed to multiple pings, the SEL in each individual ping is summed to calculate the total SEL. The total SEL depends on the SPL, duration, and number of pings received. The thresholds that NMFS uses to indicate at what received level the onset of temporary threshold shift (TTS) and permanent threshold shift (PTS) in hearing are likely to occur are expressed in SEL.

**Dates and Duration of the Proposed Specified Activity**

The Q–20 study area includes target and operational test fields located in W–151, an area within the GOM subject to military operations which also encompasses the Panama City OPAREA (see Figure 2–1 of the Navy's IHA application). The Q–20 test activities will be conducted in the non-territorial waters off the United States (beyond 22.2 km or 12 nmi) within the U.S. EEZ in the GOM. The locations and environments include:

- Wide coastal shelf to 183 meters (m) [600 feet (ft)].
- Sea surface temperature range of 27 degrees Celsius (°C) [80 degrees Fahrenheit (°F)] in summer to 10 °C (50 °F) in winter. Seasons are defined as December 23 through April 2 (winter) and July 2 through September 24 (summer) (DON, 2007a).
- Mostly sandy bottom and good underwater visibility.
- Sea heights less than 0.91 m (3 ft) during 80 percent of the time in summer and 50 percent of the time in winter (DON, 2009a).

The Navy requests an IHA for a time period of one year beginning July, 27 2013. A total of 42 Q–20 (RDT&E) test days would be conducted with a maximum sonar operation of 10 hours per a test day.

**Description of Marine Mammals in the Area of the Proposed Specified Activity**

The marine mammal species that potentially occur within the GOM include 28 species of cetaceans and one sirenian (Jefferson and Schiro, 1997; Wursig *et al.,* 2000; see Table 1 below). In addition to the 28 species known to occur in the GOM, the long-finned pilot whale (*Globicephala melas*), long-beaked common dolphin (*Delphinus capensis*), and short-beaked common dolphin (*Delphinus delphis*) could potentially occur there; however, there are no confirmed sightings of these species in the GOM, they have been seen close and could eventually be found there (Wursig *et al.,* 2000). NMFS considers it unlikely that these three species would be exposed to sound from the proposed activities and potential impacts are thus discountable. Those three species are not considered further in this document. The marine mammals that generally occur in the proposed action area belong to three taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the West Indian manatee). Of the marine mammal species that potentially occur within the GOM, 21 species of cetaceans (20 odontocetes, 1 mysticete) are routinely present and have been included in the analysis for incidental take to the proposed Q–20 testing operations. Marine mammal species listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), includes the North Atlantic right (*Eubalaena glacialis*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whale, as well as the West Indian (Florida) manatee (*Trichechus manatus latirostris*). Of those endangered species, none are likely to be encountered in the proposed study area. No species of pinnipeds are known to occur regularly in the GOM and any pinniped sighted in the proposed study area would be considered extralimital. The Caribbean monk seal (*Monachus tropicalis*) used to inhabit the GOM, but is considered extinct and has been delisted from the ESA. The U.S. Fish and Wildlife Service (USFWS) has jurisdiction and authority for managing the West Indian manatee including authorizing incidental take under both the MMPA and ESA. This species is thus not considered further in this analysis. All other referenced species are subject to NMFS's jurisdiction and thus included in our analysis.

In general, cetaceans in the GOM appear to be partitioned by habitat preferences likely related to prey distribution (Baumgartner *et al.,* 2001). Most species in the northern GOM concentrated along the upper continental slope in or near areas of cyclonic circulation in waters 200 to 1,000 m (656.2 to 3,280.8 ft) deep. Species sighted regularly in these waters include Risso's, rough-toothed, spinner, striped, pantropical spotted, and Clymene dolphins, as well as short-finned pilot, pygmy and dwarf sperm, sperm, *Mesoplodon* beaked, and unidentified beaked whales (Davis *et al.,* 1998). In contrast, continental shelf waters (< 200 m deep) are primarily inhabited by two species: bottlenose and Atlantic spotted dolphins (Davis *et al.,* 2000, 2002; Mullin and Fulling, 2004). Bottlenose dolphins are also found in deeper waters (Baumgartner *et al.,* 2001). The narrow continental shelf south of the Mississippi River delta (20 km [10.8 nmi] wide at its narrowest point) appears to be an important habitat for several cetacean species (Baumgartner *et al.,* 2001; Davis *et al.,* 2002). There appears to be a resident population of sperm whales within 100 km (54 nmi) of the Mississippi River delta (Davis *et al.,* 2002). The North Atlantic right, humpback, sei, fin, blue, minke, and True's beaked whale are considered extralimital and are excluded from further consideration of impacts from the NSWC PCD Q–20 testing analysis. Table 2 (below) presents information on the abundance, distribution, population status, conservation status, and population trend of the species of marine mammals that may occur in the proposed study area during July 2013 to July 2014.

TABLE 2—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED Q–20 STUDY AREA IN THE GULF OF MEXICO

[See text and Table 3–1, 3–2, and 3–3 in the Navy's application for further details]

| Species | Habitat | Population estimate [3] (minimum) | ESA [1] | MMPA [2] | Population trend [3] |
|---|---|---|---|---|---|
| **Mysticetes** | | | | | |
| North Atlantic right whale (*Eubalaena glacialis*). | Coastal and shelf .... | Extralimital ..... | EN | D ..... | Increasing. |
| Humpback whale (*Megaptera novaeangliae*). | Pelagic, nearshore waters, and banks. | Rare ..... | EN | D ..... | Increasing. |
| Minke whale (*Balaenoptera acutorostrata*). | Pelagic and coastal | Rare ..... | NL | NC ..... | No information available. |
| Bryde's whale (*Balaenoptera brydei/edeni*). | Pelagic and coastal | 33 (16)—Northern GOM stock | NL | NC ..... | Unable to determine. |
| Sei whale (*Balaenoptera borealis*). | Primarily offshore, pelagic. | Rare ..... | EN | D ..... | Unable to determine. |
| Fin whale (*Balaenoptera physalus*). | Continental slope, pelagic. | Rare ..... | EN | D ..... | Unable to determine. |
| Blue whale (*Balaenoptera musculus*). | Pelagic, shelf, coastal. | Extralimital ..... | EN | D ..... | Unable to determine. |
| **Odontocetes** | | | | | |
| Sperm whale (*Physeter macrocephalus*). | Pelagic, deep sea ... | 763 (560)—Northern GOM stock. | EN | D ..... | Unable to determine. |
| Pygmy sperm whale (*Kogia breviceps*) and Dwarf sperm whale (*Kogia sima*). | Deep waters off the shelf. | 186 (90)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| Cuvier's beaked whale (*Ziphius cavirostris*). | Pelagic ..... | 74 (36)—Northern GOM stock | NL | NC ..... | Unable to determine. |
| *Mesoplodon* beaked whale (includes Blainville's beaked whale [*M. densirostris*], Gervais' beaked whale [*M. europaeus*], and Sowerby's beaked whale [*M..bidens*]. | Pelagic ..... | 149 (77)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| Killer whale (*Orcinus orca*) ..... | Pelagic, shelf, coastal. | 28 (14)—Northern GOM stock | NL | NC ..... | Unable to determine. |
| Short-finned pilot whale (*Globicephala macrorhynchus*). | Pelagic, shelf coastal. | 2,415 (1,456)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| False killer whale (*Pseudorca crassidens*). | Pelagic ..... | NA—Northern GOM stock ..... | NL | NC ..... | Unable to determine. |
| Melon-headed whale (*Peponocephala electra*). | Pelagic ..... | 2,235 (1,274)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| Pygmy killer whale (*Feresa attenuata*). | Pelagic ..... | 152 (75)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| Risso's dolphin (*Grampus griseus*). | Deep water, seamounts. | 2,442 (1,563)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| Bottlenose dolphin (*Tursiops truncatus*). | Offshore, inshore, coastal, estuaries. | NA (NA)—32 Northern GOM Bay, Sound and Estuary stocks.<br>NA (NA)—Northern GOM continental shelf stock.<br>7,702 (6,551)—GOM eastern coastal stock.<br>2,473 (2,004)—GOM northern coastal stock.<br>NA (NA)—GOM western coastal stock.<br>5,806 (4,230)—Northern GOM oceanic stock. | NL | NC S–32 stocks inhabitiing the bays, sounds, and estuaries along GOM coast, and GOM western coastal stock. | Unable to determine. |
| Rough-toothed dolphin (*Steno bredanensis*). | Pelagic ..... | 624 (311)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| Fraser's dolphin (*Lagenodelphis hosei*). | Pelagic ..... | NA (NA)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| Striped dolphin (*Stenella coeruleoalba*). | Pelagic ..... | 1,849 (1,041)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| Pantropical spotted dolphin (*Stenella attenuata*). | Pelagic ..... | 50,880 (40,699)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| Atlantic spotted dolphin (*Stenella frontalis*). | Coastal and pelagic | NA (NA)—Northern GOM stock. | NL | NC ..... | Unable to determine. |

TABLE 2—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE PROPOSED Q–20 STUDY AREA IN THE GULF OF MEXICO—Continued

[See text and Table 3–1, 3–2, and 3–3 in the Navy's application for further details]

| Species | Habitat | Population estimate [3] (minimum) | ESA [1] | MMPA [2] | Population trend [3] |
|---|---|---|---|---|---|
| Spinner dolphin (*Stenella longirostris*). | Mostly pelagic ..... | 11,441 (6,221)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| Clymene dolphin (*Stenella clymene*). | Pelagic ..... | 129 (64)—Northern GOM stock. | NL | NC ..... | Unable to determine. |
| **Sirenians** | | | | | |
| West Indian (Florida) manatee (*Trichechus manatus latrostris*). | Coastal, rivers, and estuaries. | 3,802—U.S. stock ..... | EN | D ..... | Increasing or stable throughout much of Florida. |

NA = Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, NC = Not Classified.
[3] NMFS Draft 2012 Stock Assessment Reports.
[4] USFWS Stock Assessment Reports.

The information contained herein relies heavily on the data gathered in the Marine Resource Assessments (MRAs). The Navy Marine Resources Assessment (MRA) program was implemented by the Commander, United States Fleet Forces Command, to collect data and information on the protected and commercial marine resources found in the Navy OPAREAs. Specifically, the goal of the MRA program is to describe and document the marine resources present in each of the Navy's OPAREAs. As such, an MRA was finalized in 2007 for the GOM, which comprises three adjacent OPAREAs, one of which is the Panama City OPAREA (DON, 2007a).

The MRA represents a compilation and synthesis of available scientific literature (e.g., journals, periodicals, theses, dissertations, project reports, and other technical reports published by government agencies, private businesses, or consulting firms) and NMFS reports, including stock assessment reports (SARs), recovery plans, and survey reports. The MRA summarize the physical environment (e.g., marine geology, circulation and currents, hydrography, and plankton and primary productivity) for each test area. In addition, an in-depth discussion of the biological environment (marine mammals, sea turtles, fish, and EFH), as well as fishing grounds (recreational and commercial) and other areas of interest (e.g., maritime boundaries, navigable waters, marine managed areas, recreational diving sites) are also provided. Where applicable, the information contained in the MRA was used for analyses in this document. Appendix A of the Navy's IHA application contains more information about each marine mammal species potentially found in the Q–20 study area. The GOM MRA also contains detailed information, with a species description, status, habitat preference, distribution, behavior and life history, as well as information on its acoustics and hearing ability (DON, 2007a).

A detailed description of marine mammal density estimates and their distribution in the Q–20 study area is provided in the Navy's Q–20 IHA application.

**Potential Effects on Marine Mammal**

The Navy considers that the proposed Q–20 sonar testing activities in the Q–20 study area could potentially result in harassment to marine mammals. Although surface operations related to sonar testing involve ship movement in the vicinity of the Q–20 test area, NMFS considers it unlikely that ship strike could occur as analyzed below.

*Surface Operations*

Typical operations occurring at the surface include the deployment or towing of mine countermeasures (MCM) equipment, retrieval of equipment, and clearing and monitoring for non-participating vessels. As such, the potential exists for a ship to strike a marine mammal while conducting surface operations. In an effort to reduce the likelihood of a vessel strike, the mitigation and monitoring measures discussed below would be implemented.

Collisions with commercial and U.S. Navy vessels can cause major wounds and may occasionally cause fatalities to marine mammals. The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). Laist *et al.* (2001) identified 11 species known to be hit by ships worldwide. Of these species, fin whales are struck most frequently; followed by right whales, humpback whales, sperm whales, and gray whales. More specifically, from 1975 through 1996, there were 31 dead whale strandings involving four large whales along the GOM coastline. Stranded animals included two sei whales, four minke whales, eight Bryde's whales, and 17 sperm whales. Only one of the stranded animals, a sperm whale with propeller wounds found in Louisiana on 9 March 1990, was identified as stranding as a result of a possible ship strike (Laist *et al.,* 2001). In addition, from 1999 through 2003, there was only one stranding involving a false killer whale in the northern GOM (Alabama, 1999) (Waring *et al.,* 2006). According to the 2010 Stock Assessment Report (NMFS, 2011), during 2009 there was one known Bryde's whale mortality as a result of a ship strike. Otherwise, no other marine mammal that is likely to occur in the northern GOM has been reported as either seriously or fatally injured as a result of a ship strike from 1999 through 2009 (Waring *et al.,* 2007).

It is unlikely that activities in non-territorial waters will result in a ship strike because of the nature of the operations and size of the vessels. For example, the hours of surface operations take into consideration operation times for multiple vessels during each test event. These vessels range in size from small Rigid Hull Inflatable Boat (RHIB) to surface vessels of approximately 128 m (420 ft). The majority of these vessels are small RHIBs and medium-sized vessels. A large proportion of the timeframe for the Q–20 test events

include periods when ships remain stationary within the test site.

The greatest time spent in transit for tests includes navigation to and from the sites. At these times, the Navy follows standard operating procedures (SOPs). The captain and other crew members keep watch during ship transits to avoid objects in the water. Furthermore, with the implementation of the proposed mitigation and monitoring measures described below, NMFS believes that it is unlikely vessel strikes would occur. Consequently, because of the nature of the surface operations and the size of the vessels, the proposed mitigation and monitoring measures developed to minimize or avoid impacts of noise, and the fact that cetaceans typically more vulnerable to ship strikes are not likely to be in the project area, the NMFS concludes that ship strikes are unlikely to occur in the Q–20 study area.

*Acoustic Effects: Exposure to Sonar*

For activities involving active tactical sonar, NMFS's analysis will identify the probability of lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance (that rises to the level of harassment), and social responses that would be classified as behavioral harassment or injury and/or would be likely to adversely affect the species or stock through effects on annual rates of recruitment or survival. In this section, we will focus qualitatively on the different ways that exposure to sonar signals may affect marine mammals. Then, in the ''Estimated Take of Marine Mammals'' section, NMFS will relate the potential effects on marine mammals from sonar exposure to the MMPA regulatory definitions of Level A and Level B harassment and attempt to quantify those effects.

*Direct Physiological Effects*

Based on the literature, there are two basic ways that Navy sonar might directly result in physical trauma or damage: Noise-induced loss of hearing sensitivity (more commonly-called ''threshold shift'') and acoustically mediated bubble growth. Separately, an animal's behavioral reaction to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the Stranding section.

*Threshold Shift (Noise-Induced Loss of Hearing)*

When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to recognize them) following exposure to a sufficiently intense sound, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is recovery), occurs in specific frequency ranges (e.g., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz)), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced by only 6 dB or reduced by 30 dB). PTS is permanent (i.e., there is no recovery), but also occurs in a specific frequency range and amount as mentioned in the TTS description.

The following physiological mechanisms are thought to play a role in inducing auditory TSs: Effects on sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS. For continuous sounds, exposures of equal energy (the same SEL) will lead to approximately equal effects. For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between exposures) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985) (although in the case of Navy sonar, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS).

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS, however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For cetaceans, published data are limited to the captive bottlenose dolphin and beluga whale (Finneran *et al.,* 2000, 2002b, 2005a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpreting environmental cues for purposes such as predator avoidance and prey capture. Depending on the frequency range of TTS degree (dB), duration, and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present.

Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a long term condition. Of note, reduced hearing sensitivity as a simple function of development and aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost. There is no empirical evidence that exposure to Navy sonar can cause PTS in any marine mammals; instead the probability of PTS has been inferred

from studies of TTS (see Richardson *et al.,* 1995).

*Acoustically Mediated Bubble Growth*

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. Recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at sound exposure levels and tissue saturation levels that are improbable to occur in a diving marine mammal. However, an alternative but related hypothesis has also been suggested: Stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.,* 2003; Fernandez *et al.,* 2005). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Collectively, these hypotheses can be referred to as ''hypotheses of acoustically mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (i.e., rectified diffusion). More recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, Energy Levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003), there is no conclusive evidence of this (Hooker *et al.,* 2011). However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005) concluded that in vivo bubble formation, which may be exacerbated by deep, long duration, repetitive dives may explain why beaked whales appear to be particularly vulnerable to sonar exposures. A recent review of evidence for gas-bubble incidence in marine mammal tissues suggest that diving mammals vary their physiological responses according to multiple stressors, and that the perspective on marine mammal diving physiology should change from simply minimizing nitrogen loading to management of the nitrogen load (Hooker *et al.,* 2011). This suggests several avenues for further study, ranging from the effects of gas bubbles at molecular, cellular and organ function levels, to comparative studies relating the presence/absence of gas bubbles to diving behavior. More information regarding hypotheses that attempt to explain how behavioral responses to Navy sonar can lead to strandings is included in the ''Behaviorally Mediated Bubble Growth'' section, after the summary of strandings.

*Acoustic Masking*

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000; Clark *et al.,* 2009). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus also decreases. This principle is also expected to apply to marine mammals because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995) argued that the maximum radius of influence of an industrial noise (including broadband low frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (i.e., surf noise, prey noise, etc.; Richardson *et al.,* 1995).

The echolocation calls of odontocetes (toothed whales) are subject to masking by high frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (i.e., upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (e.g., adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980).

As mentioned previously, the functional hearing ranges of mysticetes (baleen whales) and odontocetes (toothed whales) all encompass the frequencies of the sonar sources used in the Navy's Q–20 test activities. Additionally, almost all species' vocal

repertoires span across the frequencies of the sonar sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. However, because the pulse length and duty cycle of the Navy sonar signals are of short duration and would not be continuous, masking is unlikely to occur as a result of exposure to these signals during the Q–20 test activities in the designated Q–20 study area.

*Impaired Communication*

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which are more important than detecting a vocalization (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004; Marten and Marler, 1977; Patricelli *et al.,* 2006). Most animals that vocalize have evolved an ability to make vocal adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing animals will make one or more of the following adjustments to their vocalizations: Adjust the frequency structure; adjust the amplitude; adjust temporal structure; or adjust temporal delivery.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments remain unknown, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006). For example, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

*Stress Responses*

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune response.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995) and altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000) and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle, 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to mid-frequency and low-frequency sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses

that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise induced physiological transient stress responses in hearing-specialist fish that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses cetaceans use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on cetaceans remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

*Behavioral Disturbance*

Behavioral responses to sound are highly variable and context-specific. Exposure of marine mammals to sound sources can result in (but is not limited to) the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007).

Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound type affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways) (Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (i.e., calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (i.e., proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

There are only few empirical studies of behavioral responses of free-living cetaceans to military sonar being conducted to date, due to the difficulties in implementing experimental protocols on wild marine mammals.

An opportunistic observation was made on a tagged Blainville's beaked whale (*Mesoplodon densirostris*) before, during, and after a multi-day naval exercises involving tactical mid-frequency sonars within the U.S. Navy's sonar testing range at the Atlantic Undersea Test and Evaluation Center (AUTEC), in the Tongue of the Ocean near Andros Island in the Bahamas (Tyack *et al.,* 2011). The adult male whale was tagged with a satellite transmitter tag on May 7, 2009. During the 72 hrs before the sonar exercise started, the mean distance from whale to the center of the AUTEC range was approximately 37 km. During the 72 hrs sonar exercise, the whale moved several tens of km farther away (mean distance approximately 54 km). The received sound levels at the tagged whale during sonar exposure were estimated to be 146 dB re 1 μPa at the highest level. The tagged whale slowly returned for several days after the exercise stopped (mean distance approximately 29 km) from 0—72 hours after the exercise stopped (Tyack *et al.,* 2011).

In the past several years, controlled exposure experiments (CEE) on marine mammal behavioral responses to military sonar signals using acoustic tags have been started in the Bahamas, the Mediterranean Sea, southern California, and Norway. These behavioral response studies (BRS), though still in their early stages, have provided some preliminary insights into cetacean behavioral disturbances when exposed to simulated and actual military sonar signals.

In 2007 and 2008, two Blainville's beaked whales were tagged in the AUTEC range and exposed to simulated mid-frequency sonar signals, killer whale (*Orcinus orca*) recordings (in 2007), and pseudo-random noise (PRN, in 2008) (Tyack *et al.,* 2011). For the simulated mid-frequency exposure BRS, the tagged whale stopped clicking during its foraging dive after 9 minutes when the received level reached 138 dB SPL, or a cumulative SEL value of 142 dB re 1 $\mu Pa^2$-s. Once the whale stopped clicking, it ascended slowly, moving away from the sound source. The whale surfaced and remained in the area for approximately 2 hours before making another foraging dive (Tyack *et al.,* 2011).

The same beaked whale was exposed to killer whale sound recording during its subsequent deep foraging dive. The whale stopped clicking about 1 minute after the received level of the killer whale sound reached 98 dB SPL, just above the ambient noise level at the whale. The whale then made a long and slow ascent. After surfacing, the whale continued to swim away from the playback location for 10 hours (Tyack *et al.,* 2011).

In 2008, a Blainville's beaked was tagged and exposed with PRN that has the same frequency band as the simulated mid-frequency sonar signal. The received level at the whale ranged from inaudible to 142 dB SPL (144 dB cumulative SEL). The whale stopped clicking less than 2 minutes after exposure to the last transmission and ascended slowly to approximately 600 m. The whale appeared to stop at this depth, at which time the tag unexpectedly released from the whale (Tyack *et al.,* 2011).

During CEEs of the BRS off Norway, social behavioral responses of pilot whales and killer whales to tagging and sonar exposure were investigated. Sonar exposure was sampled for 3 pilot whale

(*Globicephala* spp.) groups and 1 group of killer whales. Results show that when exposed to sonar signals, pilot whales showed a preference for larger groups with medium-low surfacing synchrony, while starting logging, spyhopping and milling. While killer whales showed the opposite pattern, maintaining asynchronous patterns of surface behavior: decreased surfacing synchrony, increased spacing, decreased group size, tailslaps and loggings (Visser *et al.,* 2011).

Although the small sample size of these CEEs reported here is too small to make firm conclusions about differential responses of cetaceans to military sonar exposure, none of the results showed that whales responded to sonar signals with panicked flight. Instead, the beaked whales exposed to simulated sonar signals and killer whale sound recording moved in a well oriented direction away from the source towards the deep water exit from the Tongue of the Ocean (Tyack *et al.,* 2011). In addition, different species of cetaceans exhibited different social behavioral responses towards (close) vessel presence and sonar signals, which elicit different, potentially tailored and species-specific responses (Visser *et al.,* 2011).

Much more qualitative information is available on the avoidance responses of free-living cetaceans to other acoustic sources, like seismic airguns and low-frequency active sonar, than mid-frequency active sonar. Richardson *et al.,* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals.

*Behavioral Responses*

Southall *et al.,* (2007) reports the results of the efforts of a panel of experts in acoustic research from behavioral, physiological, and physical disciplines that convened and reviewed the available literature on marine mammal hearing and physiological and behavioral responses to man-made sound with the goal of proposing exposure criteria for certain effects. This compilation of literature is very valuable, though Southall *et al.* note that not all data is equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables—such data were reviewed and sometimes used for qualitative illustration, but were not included in the quantitative analysis for the criteria recommendations.

In the Southall *et al.,* (2007) report, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. HFAS/MFAS sonar is considered a non-pulse sound. Southall *et al.,* (2007) summarize the reports associated with low-, mid-, and high-frequency cetacean responses to non-pulse sounds (there are no pinnipeds in the Gulf of Mexico [GOM]) in Appendix C of their report (incorporated by reference and summarized in the three paragraphs below).

The reports that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to HFAS/MFAS) including: Vessel noise, drilling and machinery playback, low frequency M-sequences (sine wave with multiple phase reversals) playback, low frequency active sonar playback, drill vessels, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These reports generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re 1 μPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, however, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts or sound sources, so it is not surprising that responses differ.

The reports that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to HFAS/MFAS) including: Pingers, drilling playbacks, vessel and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), HFAS/MFAS, and non-pulse bands and tones. Southall *et al.* were unable to come to a clear conclusion regarding these reports. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals responded at lower levels in the field).

The reports that address the responses of high-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to HFAS/MFAS) including: Acoustic harassment devices, Acoustical Telemetry of Ocean Climate (ATOC), wind turbine, vessel noise, and construction noise. However, no conclusive results are available from these reports. In some cases, high frequency cetaceans (harbor porpoises) are observed to be quite sensitive to a wide range of human sounds at very low exposure RLs (90 to 120 dB). All recorded exposures exceeding 140 dB produced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007).

In addition to summarizing the available data, the authors of Southall *et al.* (2007) developed a severity scaling system with the intent of ultimately being able to assign some level of biological significance to a response. Following is a summary of their scoring system, a comprehensive list of the behaviors associated with each score may be found in the report:

- 0–3 (Minor and/or brief behaviors) includes, but is not limited to: No response; minor changes in speed or locomotion (but with no avoidance); individual alert behavior; minor cessation in vocal behavior; minor changes in response to trained behaviors (in laboratory).
- 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival) includes, but is not limited to: Moderate changes in speed, direction, or dive profile; brief shift in group distribution; prolonged cessation or modification of vocal behavior (duration > duration of sound); minor or moderate individual and/or group avoidance of sound; brief cessation of reproductive behavior; or refusal to initiate trained tasks (in laboratory).
- 7–9 (Behaviors considered likely to affect the aforementioned vital rates) includes, but are not limited to: Extensive of prolonged aggressive behavior; moderate, prolonged or significant separation of females and dependent offspring with disruption of acoustic reunion mechanisms; long-term avoidance of an area; outright panic, stampede, stranding; threatening or attacking sound source (in laboratory).

In Table 2 NMFS has summarized the scores that Southall *et al.* (2007) assigned to the papers that reported behavioral responses of low-frequency cetaceans, mid-frequency cetaceans, and high-frequency cetaceans to non-pulse sounds.

TABLE 3—DATA COMPILED FROM THREE TABLES FROM SOUTHALL *et al.* (2007) INDICATING WHEN MARINE MAMMALS (LOW-FREQUENCY CETACEAN = L, MID-FREQUENCY CETACEAN = M, AND HIGH-FREQUENCY CETACEAN = H) WERE REPORTED AS HAVING A BEHAVIORAL RESPONSE OF THE INDICATED SEVERITY TO A NON-PULSE SOUND OF THE INDICATED RECEIVED LEVEL. AS DISCUSSED IN THE TEXT, RESPONSES ARE HIGHLY VARIABLE AND CONTEXT SPECIFIC

| | Received RMS sound pressure level (dB re 1 microPa) | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Response score | 80 to < 90 | 90 to < 100 | 100 to < 110 | 110 to <120 | 120 to < 130 | 130 to < 140 | 140 to < 150 | 150 to < 160 | 160 to < 170 | 170 to < 180 | 180 to < 190 | 190 to < 200 |
| 9 | | | | | | | | | | | | |
| 8 | | M | M | | M | | M | | | | M | M |
| 7 | | | | | | L | L | | | | | |
| 6 | H | L/H | L/H | L/M/H | L/M/H | L | L/H | H | M/H | M | | |
| 5 | | | | | M | | | | | | | |
| 4 | | | H | L/M/H | L/M | | L | | | | | |
| 3 | | M | L/M | L/M | M | | | | | | | |
| 2 | | | L | L/M | L | L | L | | | | | |
| 1 | | | M | M | M | | | | | | | |
| 0 | L/H | L/H | L/M/H | L/M/H | L/M/H | L | M | | | | M | M |

*Potential Effects of Behavioral Disturbance*

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal. There is little marine mammal data quantitatively relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or unconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time: When animals focus their attention on specific environmental cues, they are not attending to other activities such a foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002).

Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (for example, multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (for example, when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. For example, bighorn sheep and Dall's sheep dedicated more time being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.,* 1991).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the body condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.,* 1996; Madsen, 1994; White, 1983). For example, Madsen (1994) reported that pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46-percent reproductive success compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging), which did not gain mass and had a 17 percent reproductive success. Similar reductions in reproductive success have been reported for mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.,* 1988), caribou disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), caribou disturbed by low-elevation military jetfights (Luick *et al.,* 1996), and caribou disturbed by low-elevation jet flights (Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand). For example, a study of grizzly bears (*Ursus horribilis*) reported that bears disturbed by hikers reduced their energy intake by an average of 12 kcal/min (50.2 × 103kJ/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.,* 1999).

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than

one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

*Stranding and Mortality*

When a live or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most stranding are unknown (Geraci *et al.,* 1976; Eaton, 1979, Odell *et al.,* 1980; Best, 1982).

Several sources have published lists of mass stranding events of cetaceans during attempts to identify relationships between those stranding events and military sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (IWC, 2005) identified 10 mass stranding events of Cuvier's beaked whales that had been reported and one mass stranding of four Baird's beaked whales (*Berardius bairdii*). The IWC concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been associated with the use of mid-frequency sonar, one of those seven had been associated with the use of low frequency sonar, and the remaining stranding event had been associated with the use of seismic airguns. None of the strandings has been associated with high frequency sonar such as the Q–20 sonar proposed to be tested in this action. Therefore, NMFS does not consider it likely that the proposed Q–20 testing activity would cause marine mammals to strand.

**Anticipated Effects on Marine Mammal Habitat**

There are no areas within the NSWC PCD that are specifically considered as important physical habitat for marine mammals.

The prey of marine mammals are considered part of their habitat. The Navy's Final Environmental Impact Statement and Overseas Environmental Impact Statement (FEIS) on the research, development, test and evaluation activities in the NSWC PCD study area contains a detailed discussion of the potential effects to fish from HFAS/MFAS. These effects are the same as expected from the proposed Q–20 sonar testing activities within the same area.

The extent of data, and particularly scientifically peer-reviewed data, on the effects of high intensity sounds on fish is limited. In considering the available literature, the vast majority of fish species studied to date are hearing generalists and cannot hear sounds above 500 to 1,500 Hz (depending upon the species), and, therefore, behavioral effects on these species from higher frequency sounds are not likely. Moreover, even those fish species that may hear above 1.5 kHz, such as a few sciaenids and the clupeids (and relatives), have relatively poor hearing above 1.5 kHz as compared to their hearing sensitivity at lower frequencies. Therefore, even among the species that have hearing ranges that overlap with some mid- and high frequency sounds, it is likely that the fish will only actually hear the sounds if the fish and source are very close to one another. Finally, since the vast majority of sounds that are of biological relevance to fish are below 1 kHz (e.g., Zelick *et al.,* 1999; Ladich and Popper, 2004), even if a fish detects a mid- or high frequency sound, these sounds will not mask detection of lower frequency biologically relevant sounds. Based on the above information, there will likely be few, if any, behavioral impacts on fish.

Alternatively, it is possible that very intense mid- and high frequency signals could have a physical impact on fish, resulting in damage to the swim bladder and other organ systems. However, even these kinds of effects have only been shown in a few cases in response to explosives, and only when the fish has been very close to the source. Such effects have never been indicated in response to any Navy sonar. Moreover, at greater distances (the distance clearly would depend on the intensity of the signal from the source) there appears to be little or no impact on fish, and particularly no impact on fish that do not have a swim bladder or other air bubble that would be affected by rapid pressure changes.

**Proposed Mitigation**

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species for taking for certain subsistence uses. The National Defense Authorization Act (NDAA) of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The Q–20 sonar testing activities described in the Navy's IHA application are considered military readiness activities.

For the proposed Q–20 sonar testing activities in the GOM, NMFS worked with the Navy to develop mitigation measures. The Navy then proposed the following mitigation measures, which include a careful balancing of minimizing impacts to marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity.''

*Protective Measures Related to Surface Operations*

Visual surveys will be conducted for all test operations to reduce the potential for vessel collisions to occur with a protected species. If necessary, the ship's course and speed will be adjusted.

*Personnel Training*

Marine mammal mitigation training for those who participate in the active sonar activities is a key element of the protective measures. The goal of this training is for key personnel onboard Navy platforms in the Q–20 study area to understand the protective measures and be competent to carry them out. The Marine Species Awareness Training (MSAT) is provided to all applicable participants, where appropriate. The program addresses environmental protection, laws governing the protection of marine species, Navy stewardship, and general observation information including more detailed information for spotting marine mammals. Marine mammal observer training will be provided before active sonar testing begins.

Marine observers would be aware of the specific actions to be taken based on the RDT&E platform if a marine mammal is observed. Specifically, the following requirements for personnel training would apply:

- All marine mammal observers onboard platforms involved in the Q–20 sonar test activities will review the

NMFS-approved MSAT material prior to use of active sonar.

• Marine mammal observers shall be trained in marine mammal recognition. Marine mammal observer training shall include completion of the MSAT, instruction on governing laws and policies, and overview of the specific Gulf of Mexico species present, and observer roles and responsibilities.

• Marine mammal observers will be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

*Range Operating Procedures*

The following procedures would be implemented to maximize the ability of Navy personnel to recognize instances when marine mammals are in the vicinity.

(1) Marine Mammal Observer Responsibilities

• Marine mammal observers will have at least one set of binoculars available for each person to aid in the detection of marine mammals.

• Marine mammal observers will scan the water from the ship to the horizon and be responsible for all observations in their sector. In searching the assigned sector, the lookout will always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout will hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout will scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They will search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses will be lowered to allow the eyes to rest for a few seconds, and then the lookout will search back across the sector with the naked eye.

• Marine mammal observers will be responsible for informing the Test Director of any marine mammal that may need to be avoided, as warranted.

• These procedures would apply as much as possible during RMMV operations. When an RMMV is operating over the horizon, it is impossible to follow and observe it during the entire path. An observer will be located on the support vessel or platform to observe the area when the system is undergoing a small track close to the support platform.

(2) Operating Procedures

• Test Directors will, as appropriate to the event, make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible, consistent with the safety of the ship.

• During Q–20 sonar activities, personnel will utilize all available sensor and optical system (such as night vision goggles) to aid in the detection of marine mammals.

• Navy aircraft participating will conduct and maintain, when operationally feasible, required, and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

• Marine mammal detections by aircraft will be immediately reported to the Test Director. This action will occur when it is reasonable to conclude that the course of the ship will likely close the distance between the ship and the detected marine mammal.

• Exclusion Zones—The Navy will ensure that sonar transmissions are ceased if any detected marine mammals are within 200 yards (183 m [600.4 ft]) of the sonar source. Active sonar will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m [5,997.4 ft]) beyond the location of the last detection.

• Special conditions applicable for bow-riding dolphins only: If, after conducting an initial maneuver to avoid close quarters with dolphins, the Test Director or the Test Director's designee concludes that dolphins are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins continue to exhibit bow wave riding behavior because the dolphins are out of the main transmission axis of the active sonar while in the shallow-wave area of the vessel bow.

• Sonar levels (generally)—Navy will operate sonar at the lowest practicable level, except as required to meet testing objectives.

*Clearance Procedures*

When the test platform (surface vessel or aircraft) arrives at the test site, an initial evaluation of environmental suitability will be made. This evaluation will include an assessment of sea state and verification that the area is clear of visually detectable marine mammals and indicators of their presence. For example, large flocks of birds and large schools of fish are considered indicators of potential marine mammal presence.

If the initial evaluation indicates that the area is clear, visual surveying will begin. The area will be visually surveyed for the presence of protected species and protected species indicators. Visual surveys will be conducted from the test platform before test activities begin. When the platform is a surface vessel, no additional aerial surveys will be required. For surveys requiring only surface vessels, aerial surveys may be opportunistically conducted by aircraft participating in the test.

Shipboard monitoring will be staged from the highest point possible on the vessel. The observer(s) will be experienced in shipboard surveys, familiar with the marine life of the area, and equipped with binoculars of sufficient magnification. Each observer will be provided with a two-way radio that will be dedicated to the survey, and will have direct radio contact with the Test Director. Observers will report to the Test Director any sightings of marine mammals or indicators of these species, as described previously. Distance and bearing will be provided when available. Observers may recommend a ''Go''/''No Go'' decision, but the final decision will be the responsibility of the Test Director.

Post-mission surveys will be conducted from the surface vessel(s) and aircraft used for pre-test surveys. Any affected marine species will be documented and reported to NMFS. The report will include the date, time, location, test activities, species (to the lowest taxonomic level possible), behavior, and number of animals.

NMFS has carefully evaluated the Navy's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the Navy's proposed measures, as well as other

measures considered by NMFS, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

**Proposed Monitoring and Reporting**

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

The RDT&E Monitoring Program, proposed by the Navy as part of its IHA application, is focused on mitigation-based monitoring. Main monitoring techniques include use of civilian personnel as marine mammal observers during pre-, during-, and post-test events.

Systematic monitoring of the affected area for marine mammals will be conducted prior to, during, and after test events using aerial and/or ship-based visual surveys. Observers will record information during the test activity. Data recorded will include exercise information (time, date, and location) and marine mammal and/or indicator presence, species, number of animals, their behavior, and whether there are changes in the behavior. Personnel will immediately report observed stranded or injured marine mammals to NMFS stranding response network and NMFS Regional Office. Reporting requirements will be included in the NSWC PCD Mission Activity Report and NSWC PCD Mission Activities Annual Monitoring Report as required by its Final Rule (DON, 2009a; NMFS, 2010).

*Ongoing Monitoring*

The Navy has an existing Monitoring Plan that provides for site-specific monitoring for MMPA and Endangered Species Act (ESA) listed species, primarily marine mammals within the Gulf of Mexico, including marine water areas of the Q–20 Study Area. The NSWC PCD Monitoring Plan (DON, 2011) was initially developed in support of the NSWC PCD Mission Activities Final Environmental Impact Statement/Overseas Environmental Impact Statement and subsequent Final Rule by NMFS (DON, 2009a; NMFS, 2010). The primary goals of monitoring are to evaluate trends in marine species distribution and abundance in order to assess potential population effects from Navy training and testing events and determine the effectiveness of the Navy's mitigation measures. The monitoring plan, adjusted annually in consultation under an adaptive management review process with NMFS, includes aerial- and ship-based visual observations, acoustic monitoring, and other efforts such as oceanographic observations. The U.S. Navy is not currently committing to increased visual surveys at this time, but will research opportunities for leveraged work that could be added under an adaptive management provision of the IHA application for future Q–20 study area monitoring.

*On-going Reporting*

Due to changes in the program schedule, the Navy has not yet conducted any Q–20 activities under their current IHA. The Navy plans to conduct tests under the current IHA in April, 2013. Additional monitoring data is contained in the NSWC PCD 2013 Monitoring Report submitted to NMFS in September, 2012.

**Estimated Take by Incidental Harassment**

*Definition of Harassment*

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

*Level B Harassment*

Of the potential effects that were described in the ''Potential Effects of Exposure of Marine Mammals to Sonar'' section, the following are the types of effects that fall into the Level B harassment category:

Behavioral Harassment—Behavioral disturbance that rises to the level described in the definition above, when resulting from exposures to active sonar exposure, is considered Level B harassment. Some of the lower level physiological stress responses will also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When Level B harassment is predicted based on estimated behavioral responses, those takes may have a stress-related physiological component as well.

In the effects section above, we described the Southall *et al.,* (2007) severity scaling system and listed some examples of the three broad categories of behaviors: (0–3: Minor and/or brief behaviors); 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival); 7–9 (Behaviors considered likely to affect the aforementioned vital rates). Generally speaking, MMPA Level B harassment, as defined in this document, would include the behaviors described in the 7–9 category, and a subset, dependent on context and other considerations, of the behaviors described in the 4–6 categories. Behavioral harassment generally does not include behaviors ranked 0–3 in Southall *et al.,* (2007).

Acoustic Masking and Communication Impairment—Acoustic masking is considered Level B harassment as it can disrupt natural behavioral patterns by interrupting or limiting the marine mammal's receipt or transmittal of important information or environmental cues.

TTS—As discussed previously, TTS can affect how an animal behaves in response to the environment, including conspecifics, predators, and prey. The following physiological mechanisms are thought to play a role in inducing auditory fatigue: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS, they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from

fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to Navy sonar) as Level B harassment, not Level A harassment (injury).

*Level A Harassment*

Of the potential effects that were described in the Potential Effects of Exposure of Marine Mammal to Sonar section, following are the types of effects that fall into the Level A harassment category:

PTS—PTS (resulting from exposure to active sonar) is irreversible and considered an injury. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and results in changes in the chemical composition of the inner ear fluids.

*Acoustic Take Criteria*

For the purposes of an MMPA incidental take authorization, three types of take are identified: Level B harassment; Level A harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into the two harassment categories were described in the previous section.

Because the physiological and behavioral responses of the majority of the marine mammals exposed to military sonar cannot be detected or measured, a method is needed to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the proposed action. To this end, NMFS uses acoustic criteria that estimate at what received level (when exposed to Navy sonar) Level B harassment and Level A harassment of marine mammals would occur. These acoustic criteria are discussed below.

Relatively few applicable data exist to support acoustic criteria specifically for HFAS (such as the Q–20 active sonar). However, because MFAS systems have larger impact ranges, NMFS will apply the criteria developed for the MFAS systems to the HFAS systems.

NMFS utilizes three acoustic criteria for HFAS/MFAS: PTS (injury—Level A harassment), behavioral harassment from TTS, and sub-TTS (Level B harassment). Because the TTS and PTS criteria are derived similarly and the PTS criteria was extrapolated from the TTS data, the TTS and PTS acoustic criteria will be presented first, before the behavioral criteria.

For more information regarding these criteria, please see the Navy's FEIS for the NSWC PCD (Navy 2009).

*Level B Harassment Threshold (TTS)*

As mentioned above, behavioral disturbance, acoustic masking, and TTS are all considered Level B harassment. Marine mammals would usually be behaviorally disturbed at lower received levels than those at which they would likely sustain TTS, so the levels at which behavioral disturbance is likely to occur are considered the onset of Level B harassment. The behavioral responses of marine mammals to sound are variable, context specific, and, therefore, difficult to quantify (see Risk Function section, below). TTS is a physiological effect that has been studied and quantified in laboratory conditions. NMFS also uses acoustic criteria to estimate the number of marine mammals that might sustain TTS incidental to a specific activity (in addition to the behavioral criteria).

A number of investigators have measured TTS in marine mammals. These studies measured hearing thresholds in trained marine mammals before and after exposure to intense sounds. The existing cetacean TTS data are summarized in the following bullets.

- Schlundt *et al.* (2000) reported the results of TTS experiments conducted with 5 bottlenose dolphins and 2 belugas exposed to 1-second tones. This paper also includes a reanalysis of preliminary TTS data released in a technical report by Ridgway *et al.* (1997). At frequencies of 3, 10, and 20 kHz, sound pressure levels (SPLs) necessary to induce measurable amounts (6 dB or more) of TTS were between 192 and 201 dB re 1 μPa (EL = 192 to 201 dB re 1 $\mu Pa^2$-s). The mean exposure SPL and EL for onset-TTS were 195 dB re 1 μPa and 195 dB re 1 $\mu Pa^2$-s, respectively.
- Finneran *et al.* (2001, 2003, 2005) described TTS experiments conducted with bottlenose dolphins exposed to 3-kHz tones with durations of 1, 2, 4, and 8 seconds. Small amounts of TTS (3 to 6 dB) were observed in one dolphin after exposure to ELs between 190 and 204 dB re 1 $microPa^2$-s. These results were consistent with the data of Schlundt *et al.* (2000) and showed that the Schlundt *et al.* (2000) data were not significantly affected by the masking sound used. These results also confirmed that, for tones with different durations, the amount of TTS is best correlated with the exposure EL rather than the exposure SPL.
- Nachtigall *et al.* (2003) measured TTS in a bottlenose dolphin exposed to octave-band sound centered at 7.5 kHz. Nachtigall *et al.* (2003a) reported TTSs of about 11 dB measured 10 to 15 minutes after exposure to 30 to 50 minutes of sound with SPL 179 dB re 1 μPa (EL about 213 dB re $\mu Pa^2$-s). No TTS was observed after exposure to the same sound at 165 and 171 dB re 1 μPa. Nachtigall *et al.* (2004) reported TTSs of around 4 to 8 dB 5 minutes after exposure to 30 to 50 minutes of sound with SPL 160 dB re 1 μPa (EL about 193 to 195 dB re 1 $\mu Pa^2$-s). The difference in results was attributed to faster post exposure threshold measurement—TTS may have recovered before being detected by Nachtigall *et al.* (2003). These studies showed that, for long duration exposures, lower sound pressures are required to induce TTS than are required for short-duration tones.
- Finneran *et al.* (2000, 2002) conducted TTS experiments with dolphins and belugas exposed to impulsive sounds similar to those produced by distant underwater explosions and seismic waterguns. These studies showed that, for very short-duration impulsive sounds, higher sound pressures were required to induce TTS than for longer-duration tones. Some of the more important data obtained from these studies are onset-TTS levels (exposure levels sufficient to cause a just-measurable amount of TTS) often defined as 6 dB of TTS (for example, Schlundt *et al.,* 2000) and the fact that energy metrics (sound exposure levels (SEL), which include a duration component) better predict when an animal will sustain TTS than pressure (SPL) alone. NMFS's TTS criteria (which indicate the received level at which onset TTS (>6dB) is induced) for HFAS/MFAS are as follows:
- Cetaceans—195 dB re 1 $\mu Pa^2$-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans) (Southall *et al.,* 2007).

A detailed description of how TTS criteria were derived from the results of the above studies may be found in Chapter 3 of Southall *et al.* (2007), as well as the Navy's Q–20 IHA application.

*Level A Harassment Threshold (PTS)*

For acoustic effects, because the tissues of the ear appear to be the most susceptible to the physiological effects of sound, and because threshold shifts tend to occur at lower exposures than other more serious auditory effects, NMFS has determined that PTS is the best indicator for the smallest degree of injury that can be measured. Therefore, the acoustic exposure associated with

onset-PTS is used to define the lower limit of the Level A harassment.

PTS data do not currently exist for marine mammals and are unlikely to be obtained due to ethical concerns. However, PTS levels for these animals may be estimated using TTS data from marine mammals and relationships between TTS and PTS that have been discovered through study of terrestrial mammals. NMFS uses the following acoustic criteria for injury:

• Cetaceans—215 dB re 1 μPa²-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans) (Southall *et al.,* 2007).

These criteria are based on a 20 dB increase in SEL over that required for onset-TTS. Extrapolations from terrestrial mammal data indicate that PTS occurs at 40 dB or more of TS, and that TS growth occurs at a rate of approximately 1.6 dB TS per dB increase in EL. There is a 34-dB TS difference between onset-TTS (6 dB) and onset-PTS (40 dB). Therefore, an animal would require approximately 20-dB of additional exposure (34 dB divided by 1.6 dB) above onset-TTS to reach PTS. A detailed description of how TTS criteria were derived from the results of the above studies may be found in Chapter 3 of Southall *et al.* (2007), as well as the Navy's NSWC PCD LOA application. Southall *et al.* (2007) recommend a precautionary dual criteria for TTS (230 dB re 1 μPa (SPL) in addition to 215 re 1 μPa²-s (SEL)) to account for the potentially damaging transients embedded within non-pulse exposures. However, in the case of HFAS/MFAS, the distance at which an animal would receive 215 (SEL) is farther from the source than the distance at which they would receive 230 (SPL) and therefore, it is not necessary to consider 230 dB.

We note here that behaviorally mediated injuries (such as those that have been hypothesized as the cause of some beaked whale strandings) could potentially occur in response to received levels lower than those believed to directly result in tissue damage. As mentioned previously, data to support a quantitative estimate of these potential effects (for which the exact mechanism is not known and in which factors other than received level may play a significant role) do not exist.

*Level B Harassment Risk Function (Behavioral Harassment)*

The first MMPA authorization for take of marine mammals incidental to tactical active sonar was issued in 2006 for Navy Rim of the Pacific training exercises in Hawaii. For that authorization, NMFS used 173 dB SEL as the criterion for the onset of behavioral harassment (Level B harassment). This type of single number criterion is referred to as a step function, in which (in this example) all animals estimated to be exposed to received levels above 173 dB SEL would be predicted to be taken by Level B harassment and all animals exposed to less than 173 dB SEL would not be taken by Level B harassment. As mentioned previously, marine mammal behavioral responses to sound are highly variable and context specific (affected by differences in acoustic conditions; differences between species and populations; differences in gender, age, reproductive status, or social behavior; or the prior experience of the individuals), which does not support the use of a step function to estimate behavioral harassment.

Unlike step functions, acoustic risk continuum functions (which are also called ''exposure-response functions,'' ''dose-response functions,'' or ''stress response functions'' in other risk assessment contexts) allow for probability of a response that NMFS would classify as harassment to occur over a range of possible received levels (instead of one number) and assume that the probability of a response depends first on the ''dose'' (in this case, the received level of sound) and that the probability of a response increases as the ''dose'' increases. The Navy and NMFS have previously used acoustic risk functions to estimate the probable responses of marine mammals to acoustic exposures in the Navy FEISs on the SURTASS LFA sonar (DoN, 2001c) and the North Pacific Acoustic Laboratory experiments conducted off the Island of Kauai (ONR, 2001). The specific risk functions used here were also used in the MMPA regulations and FEIS for Hawaii Range Complex (HRC), Southern California Range Complex (SOCAL), and Atlantic Fleet Active Sonar Testing (AFAST). As discussed in the Effects section, factors other than received level (such as distance from or bearing to the sound source) can affect the way that marine mammals respond; however, data to support a quantitative analysis of those (and other factors) do not currently exist. NMFS will continue to modify these criteria as new data becomes available.

To assess the potential effects on marine mammals associated with active sonar used during training activity, the Navy and NMFS applied a risk function that estimates the probability of behavioral responses that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFA sonar. The mathematical function is derived from a solution in Feller (1968) as defined in the SURTASS LFA Sonar Final OEIS/EIS (DoN, 2001), and relied on in the Supplemental SURTASS LFA Sonar EIS (DoN, 2007a) for the probability of MFA sonar risk for MMPA Level B behavioral harassment with input parameters modified by NMFS for MFA sonar for mysticetes and odontocetes (NMFS, 2008). The same risk function and input parameters will be applied to high frequency active (HFA) (>10 kHz) sources until applicable data becomes available for high frequency sources.

In order to represent a probability of risk, the function should have a value near zero at very low exposures, and a value near one for very high exposures. One class of functions that satisfies this criterion is cumulative probability distributions, a type of cumulative distribution function. In selecting a particular functional expression for risk, several criteria were identified:

• The function must use parameters to focus discussion on areas of uncertainty;

• The function should contain a limited number of parameters;

• The function should be capable of accurately fitting experimental data; and

• The function should be reasonably convenient for algebraic manipulations.

As described in U.S. Department of the Navy (2001), the mathematical function below is adapted from a solution in Feller (1968).

$$R = \frac{1 - \left(\frac{L-B}{K}\right)^{-A}}{1 - \left(\frac{L-B}{K}\right)^{-2A}}$$

Where:

R = Risk (0–1.0)

L = Received level (dB re: 1 μPa)

B = Basement received level = 120 dB re: 1 μPa

K = Received level increment above B where 50 percent risk = 45 dB re: 1 μPa

A = Risk transition sharpness parameter = 10 (odontocetes) or 8 (mysticetes)

In order to use this function to estimate the percentage of an exposed population that would respond in a manner that NMFS classifies as Level B harassment, based on a given received level, the values for B, K and A need to be identified.

B Parameter (Basement)—The B parameter is the estimated received level below which the probability of disruption of natural behavioral patterns, such as migration, surfacing, nursing, breeding, feeding, or sheltering,

to a point where such behavioral patterns are abandoned or significantly altered approaches zero for the HFAS/MFAS risk assessment. At this received level, the curve would predict that the percentage of the exposed population that would be taken by Level B harassment approaches zero. For HFAS/MFAS, NMFS has determined that B = 120 dB. This level is based on a broad overview of the levels at which many species have been reported responding to a variety of sound sources.

K Parameter (representing the 50 percent Risk Point)—The K parameter is based on the received level that corresponds to 50 percent risk, or the received level at which we believe 50 percent of the animals exposed to the designated received level will respond in a manner that NMFS classifies as Level B harassment. The K parameter (K = 45 dB) is based on three datasets in which marine mammals exposed to mid-frequency sound sources were reported to respond in a manner that NMFS would classify as Level B harassment. There is widespread consensus that marine mammal responses to HFA/MFA sound signals need to be better defined using controlled exposure experiments (Cox *et al.,* 2006; Southall *et al.,* 2007). The Navy is contributing to an ongoing behavioral response study in the Bahamas that is expected to provide some initial information on beaked whales, the species identified as the most sensitive to MFAS. NMFS is leading this international effort with scientists from various academic institutions and research organizations to conduct studies on how marine mammals respond to underwater sound exposures. Until additional data is available, however, NMFS and the Navy have determined that the following three data sets are most applicable for the direct use in establishing the K parameter for the HFAS/MFAS risk function. These data sets, summarized below, represent the only known data that specifically relate altered behavioral responses (that NMFS would consider Level B harassment) to exposure to HFAS/MFAS sources.

Even though these data are considered the most representative of the proposed specified activities, and therefore the most appropriate on which to base the K parameter (which basically determines the midpoint) of the risk function, these data have limitations, which are discussed in Appendix J of the Navy's EIS for the NSWC PCD (DoN, 2009) and summarized in the Navy's IHA application.

Calculation of K Parameter—NMFS and the Navy used the mean of the following values to define the midpoint of the function: (1) The mean of the lowest received levels (185.3 dB) at which individuals responded with altered behavior to 3 kHz tones in the SSC data set; (2) the estimated mean received level value of 169.3 dB produced by the reconstruction of the USS SHOUP incident in which killer whales exposed to MFA sonar (range modeled possible received levels: 150 to 180 dB); and (3) the mean of the 5 maximum received levels at which Nowacek *et al.* (2004) observed significantly altered responses of right whales to the alert stimuli than to the control (no input signal) is 139.2 dB SPL. The arithmetic mean of these three mean values is 165 dB SPL. The value of K is the difference between the value of B (120 dB SPL) and the 50 percent value of 165 dB SPL; therefore, K=45.

A Parameter (Steepness)—NMFS determined that a steepness parameter (A) = 10 is appropriate for odontocetes (except harbor porpoises) and pinnipeds and A = 8 is appropriate for mysticetes.

The use of a steepness parameter of A = 10 for odontocetes (except harbor porpoises) for the HFAS/MFAS risk function was based on the use of the same value for the SURTASS LFA risk continuum, which was supported by a sensitivity analysis of the parameter presented in Appendix D of the SURTASS/LFA FEIS (DoN, 2001c). As concluded in the SURTASS FEIS/EIS, the value of A = 10 produces a curve that has a more gradual transition than the curves developed by the analyses of migratory gray whale studies (Malme *et al.,* 1984; Buck and Tyack, 2000; and SURTASS LFA Sonar EIS, Subchapters 1.43, 4.2.4.3 and Appendix D, and NMFS, 2008).

NMFS determined that a lower steepness parameter (A = 8), resulting in a shallower curve, was appropriate for use with mysticetes and HFAS/MFAS. The Nowacek *et al.* (2004) dataset contains the only data illustrating mysticete behavioral responses to a mid-frequency sound source. A shallower curve (achieved by using A=8) better reflects the risk of behavioral response at the relatively low received levels at which behavioral responses of right whales were reported in the Nowacek *et al.* (2004) data. Compared to the odontocete curve, this adjustment results in an increase in the proportion of the exposed population of mysticetes being classified as behaviorally harassed at lower RLs, such as those reported in and supported by the only dataset currently available.

Basic Application of the Risk Function—The risk function is used to estimate the percentage of an exposed population that is likely to exhibit behaviors that would qualify as harassment (as that term is defined by the MMPA applicable to military readiness activities, such as the Navy's testing and research activities with HFA/MFA sonar) at a given received level of sound. For example, at 165 dB SPL (dB re: 1 µPa rms), the risk (or probability) of harassment is defined according to this function as 50 percent, and Navy/NMFS applies that by estimating that 50 percent of the individuals exposed at that received level are likely to respond by exhibiting behavior that NMFS would classify as behavioral harassment. The risk function is not applied to individual animals, only to exposed populations.

The data primarily used to produce the risk function (the K parameter) were compiled from four species that had been exposed to sound sources in a variety of different circumstances. As a result, the risk function represents a general relationship between acoustic exposures and behavioral responses that is then applied to specific circumstances. That is, the risk function represents a relationship that is deemed to be generally true, based on the limited, best-available science, but may not be true in specific circumstances. In particular, the risk function, as currently derived, treats the received level as the only variable that is relevant to a marine mammal's behavioral response. However, we know that many other variables—the marine mammal's gender, age, and prior experience; the activity it is engaged in during an exposure event, its distance from a sound source, the number of sound sources, and whether the sound sources are approaching or moving away from the animal—can be critically important in determining whether and how a marine mammal will respond to a sound source (Southall *et al.,* 2007). The data that are currently available do not allow for incorporation of these other variables in the current risk functions; however, the risk function represents the best use of the data that are available (Figure 1).

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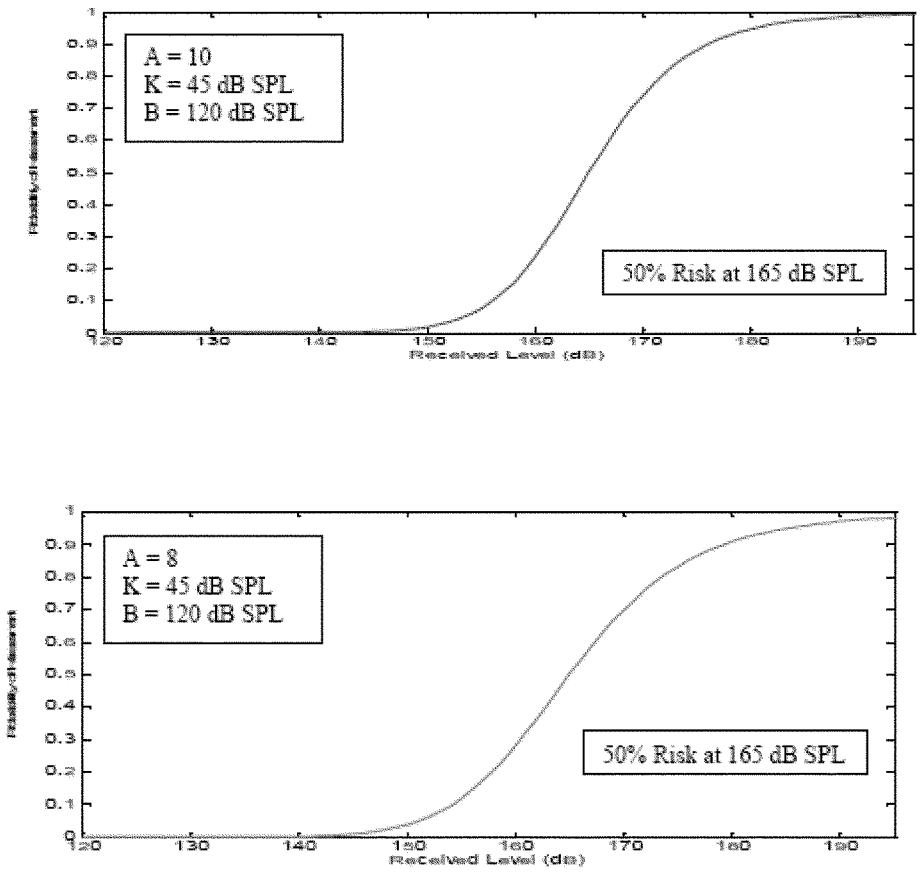


Figure 1. Risk Functions for odontocetes (above) and mysticetes (below).

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As more specific and applicable data become available for HFAS/MFAS sources, NMFS can use these data to modify the outputs generated by the risk function to make them more realistic. Ultimately, data may exist to justify the use of additional, alternate, or multivariate functions. For example, as mentioned previously, the distance from the sound source and whether it is perceived as approaching or moving away can affect the way an animal responds to a sound (Wartzok *et al.,* 2003).

*Estimated Exposures of Marine Mammals*

Acoustical modeling provides an estimate of the actual exposures. Detailed information and formulas to model the effects of sonar from Q–20 sonar testing activities in the Q–20 Study Area are provided in Appendix A, Supplemental Information for Underwater Noise Analysis of the Navy's IHA application.

The quantitative analysis was based on conducting sonar operations in 13 different geographical regions, or provinces. Using combined marine mammal density and depth estimates, which are detailed later in this section, acoustical modeling was conducted to calculate the actual exposures. Refer to Appendix B, Geographic Description of Environmental Provinces of the Navy's IHA application, for additional information on provinces. Refer to Appendix C, Definitions and Metrics for Acoustic Quantities of the Navy's IHA application, for additional information regarding the acoustical analysis.

The approach for estimating potential acoustic effects from Q–20 test activities on cetacean species uses the methodology that the DON developed in cooperation with NMFS for the Navy's HRC Draft EIS (DON, 2007c). The exposure analysis for behavioral response to sound in the water uses energy flux density for Level A harassment and the methods for risk function for Level B harassment (behavioral). The methodology is provided here to determine the number and species of marine mammals for which incidental take authorization is requested. NMFS concurs with the Navy's approach and that these are the appropriate methodologies.

To estimate acoustic effects from the Q–20 test activities, acoustic sources to be used were examined with regard to their operational characteristics as described in the previous section. Systems with an operating frequency greater than 200 kHz were not analyzed in the detailed modeling as these signals attenuate rapidly resulting in very short propagation distances. Based on the information above, the Navy modeled the Q–20 sonar parameters including source levels, ping length, the interval between pings, output frequencies, directivity (or angle), and other characteristics based on records from previous test scenarios and projected future testing. Additional information on sonar systems and their associated parameters is in Appendix A, Supplemental Information for Underwater Noise Analysis of the Navy's IHA application.

Every active sonar operation includes the potential to expose marine animals in the neighboring waters. The number of animals exposed to the sonar is dictated by the propagation field and the manner in which the sonar is operated (i.e., source level, depth, frequency, pulse length, directivity, platform speed, repetition rate). The modeling for Q–20 test activities

involving sonar occurred in five broad steps listed below, and was conducted based on the typical RDT&E activities planned for the Q–20 Study Area.

1. *Environmental Provinces:* The Q–20 Study Area is divided into 13 environmental provinces, and each has a unique combination of environmental conditions. These represent various combinations of eight bathymetry provinces, one Sound Velocity Profile (SVP) province, and three Low-Frequency Bottom Loss geo-acoustic provinces and two High-Frequency Bottom Loss classes. These are addressed by defining eight fundamental environments in two seasons that span the variety of depths, bottom types, sound speed profiles, and sediment thicknesses found in the Q–20 Study Area. The two seasons encompass winter and summer, which are the two extremes for the GOM, the acoustic propagation characteristics do not vary significantly between the two. Each marine modeling area can be quantitatively described as a unique combination of these environments.

2. *Transmission Loss:* Since sound propagates differently in these environments, separate transmission loss calculations must be made for each, in both seasons. The transmission loss is predicted using Comprehensive Acoustic Simulation System/Gaussian Ray Bundle (CASS–GRAB) sound modeling software.

3. *Exposure Volumes:* The transmission loss, combined with the source characteristics, gives the energy field of a single ping. The energy of more than 10 hours of pinging is summed, carefully accounting for overlap of several pings, so an accurate average exposure of an hour of pinging is calculated for each depth increment. At more than 10 hours, the source is too far away and the energy is negligible. Repeating this calculation for each environment in each season gives the hourly ensonified volume, by depth, for each environment and season. This step begins the method for risk function modeling.

4. *Marine Mammal Densities:* The marine mammal densities were given in two dimensions, but using reliable peer-reviewed literature sources (published literature and agency reports) described in the following subsection, the depth regimes of these marine mammals are used to project the two dimensional densities (expressed as the number of animals per area where all individuals are assumed to be at the water's surface) into three dimensions (a volumetric approach whereby two-dimensional animal density incorporates depth into the calculation estimates).

5. *Exposure Calculations:* Each marine mammal's three-dimensional (3-D) density is multiplied by the calculated impact volume to that marine mammal depth regime. This value is the number of exposures per hour for that particular marine mammal. In this way, each marine mammal's exposure count per hour is based on its density, depth habitat, and the ensonified volume by depth.

The planned sonar hours were inserted and a cumulative number of exposures was determined for the proposed action.

Based on the analysis, Q–20 sonar operations in non-territorial waters may expose up to six species to sound likely to result in Level B (behavioral) harassment (Table 2). They include the bottlenose dolphin (*Tursiops truncatus*), Atlantic spotted dolphin (*Stenella frontalis*), pantropical spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), spinner dolphin (*Stenella longirostris*), and Clymene dolphin (*Stenella clymene*). No marine mammals would be exposed to levels of sound likely to result in TTS. The Navy requests that the take numbers of marine mammals for its IHA reflect the exposure numbers listed in Table 2.

TABLE 2—ESTIMATES AND REQUESTED TAKE OF MARINE MAMMAL EXPOSURES FROM SONAR IN NON-TERRITORIAL WATERS PER YEAR

[See Table 5–1 in the IHA application]

| Marine mammal species | Level A harassment | Level B harassment (TTS) | Level B harassment (behavioral) |
|---|---|---|---|
| Atlantic spotted dolphin | 0 | 0 | 315 |
| Bottlenose dolphin | 0 | 0 | 399 |
| Clymene dolphin | 0 | 0 | 42 |
| Pantropical spotted dolphin | 0 | 0 | 126 |
| Spinner dolphin | 0 | 0 | 126 |
| Striped dolphin | 0 | 0 | 42 |

*Potential for Long-Term Effects*

Q–20 test activities will be conducted in the same general areas, so marine mammal populations could be exposed to repeated activities over time. However, as described earlier, this analysis assumes that short-term non-injurious SELs predicted to cause temporary behavioral disruptions qualify as Level B harassment. It is highly unlikely that behavioral disruptions will result in any long-term significant effects.

*Potential for Effects on ESA-Listed Species*

To further examine the possibility of whale exposures from the proposed testing, CASSGRAB sound modeling software was used to estimate transmission losses and received sound pressure levels (SPLs) from the Q–20 when operating in the test area. Specifically, four radials out towards DeSoto Canyon (which is considered an important habitat for the ESA-listed sperm whales) were calculated. The results indicate the relatively rapid attenuation of sound pressure levels with distance from the source, which is not surprising given the high frequency of the source. Below 120 dB, the risk of significant change in a biologically important behavior approaches zero. This threshold is reached at a distance of only 2.8 km (1.5 nm) from the source. With the density of sperm whales being near zero in this potential zone of influence, this calculation reinforces NMFS's conclusion that the proposed activity is not likely to result in the take of sperm whales. It should also be noted that DeSoto Canyon is well beyond the distance at which sound pressure levels from the Q–20 attenuate to zero.

**Encouraging and Coordinating Research**

The Navy sponsors a significant portion of research concerning the effects of human-generated sound in marine mammals. Worldwide, the Navy funded over $16 million in marine

mammal research in 2012. Major topics of Navy-supported research include:

- Gaining a better understanding of marine species distribution and important habitat areas.
- Developing methods to detect and monitor marine species before and during training.
- Understanding the effects of sound on marine mammals.
- Developing tools to model and estimate potential effects of sound.

This research is directly applicable to the Q–20 study area, particularly with respect to the investigations of the potential effects of underwater noise sources on marine mammals and other protected species.

Furthermore, various research cruises by NMFS and academic institutions have been augmented with additional funding from the Navy. The Navy has also sponsored several workshops to evaluate the current state of knowledge and potential for future acoustic monitoring of marine mammals. The workshops brought together acoustic experts and marine biologists from the Navy and other research organizations to present data and information on current acoustic monitoring research efforts and to evaluate the potential for incorporating similar technology and methods on instrumented ranges.

The Navy will continue to fund ongoing marine mammal research, and includes projected funding at levels greater than $14 million per year in subsequent years. The Navy also has plans to continue in the coordination of long-term monitoring and studies of marine mammals on various established ranges and within its OPAREAs. The Navy will continue to research and contribute to university/external research to improve the state of the knowledge of the science regarding the biology and ecology of marine species, and potential acoustic effects on species from naval activities. These efforts include mitigation and monitoring programs, data sharing with NMFS and via the literature for research and development efforts, and future research, as described previously.

**Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

Section 101(a)5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (in the Gulf of Mexico) that implicate MMPA section 101(a)(5)(D).

**Negligible Impact Determination**

Pursuant to NMFS's regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, serious injury, and/or death). This estimate informs NMFS's analysis of whether the activity will have a ''negligible impact'' on the species or stock. To issue an IHA, NMFS must determine among other things, that the incidental take by harassment caused by the specified activity will have a negligible impact on affected species or stocks of marine mammals. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' . . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Level B (behavioral) harassment occurs at the level of the individual(s) and does not necessarily result in population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated serious injuries and/or mortalities, and effects on habitat.

The Navy's specified activities have been described based on best estimates of the number of Q–20 sonar test hours that the Navy will conduct. Taking the above into account, considering the sections discussed below, and dependent upon the implementation of the proposed mitigation measures, NMFS has preliminarily determined that Navy's Q–20 sonar test activities in the non-territorial waters will have a negligible impact on the marine mammal species and stocks present in the Q–20 study area.

*Behavioral Harassment*

Behavioral harassment from the Navy's proposed training activities are expected to occur as discussed in the ''Potential Effects of Exposure of Marine Mammals to Sonar'' section and illustrated in the conceptual framework, marine mammals can respond to HFAS/MFAS in many different ways, a subset of which qualifies as harassment. One thing that the take estimates do not take into account is the fact that most marine mammals will likely avoid strong sound sources to one extent or another. Although an animal that avoids the sound source will likely still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, etc.), in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response. The Navy proposes a cumulative total of only 420 hours of high-frequency sonar operations per year for the Q–20 sonar testing activities, spread among 42 days with an average of 10 hours per day, in the Q–20 study area. There will be no powerful tactical mid-frequency sonar involved. Therefore, there will be no disturbance to marine mammals resulting from MFAS systems (such as 53C). The effects that might be expected from the Navy's major training exercises at the Atlantic Fleet Active Sonar Training (AFAST) Range, Hawaii Range Complex (HRC), and Southern California (SOCAL) Range Complex will not occur here. The source level of the Q–20 sonar is much lower than the 53C series MFAS system, and high frequency signals tend to have more attenuation in the water column and are more prone to lose their energy during propagation. Therefore, their zones of influence are much smaller, thereby making it easier to detect marine mammals and prevent adverse effects from occurring.

The Navy has been conducting monitoring activities since 2006 on its sonar operations in a variety of the Naval range complexes (e.g., AFAST, HRC, SOCAL) under the Navy's own protective measures and under the regulations and LOAs. Monitoring reports based on these major training exercises using military sonar have shown that no marine mammal injury or mortality has occurred as a result of the sonar operations (DoN, 2011a; 2011b).

*Diel Cycle*

As noted previously, many animals perform vital functions, such as feeding,

resting, traveling, and socializing on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

In the previous section, we discussed the fact that potential behavioral responses to HFAS/MFAS that fall into the category of harassment could range in severity. By definition, the takes by behavioral harassment involve the disturbance of a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns (such as migration, surfacing, nursing, breeding, feeding, or sheltering) to a point where such behavioral patterns are abandoned or significantly altered. In addition, the amount of time the Q–20 sonar testing will occur is 420 hours per year in non-territorial waters, and is spread among 42 days with an average of 10 hours per day. Thus the exposure is expected to be sporadic throughout the year and is localized within a specific testing site. NMFS anticipates that the Navy's proposed training activities will not result in substantial behavioral disturbance to recruitment or survival because the exposure is expected to be less intense than other sound sources and spread out over time, which should allow for periods of recovery.

*TTS*

Based on the Navy's model and NMFS analysis, it is unlikely that marine mammals would be exposed to sonar received levels that could cause TTS due to the lower source level (207 to 212 dB re 1 µPa at 1 m) and high attenuation rate of the HAFS signals (above 35 kHz).

*Acoustic Masking or Communication Impairment*

As discussed above, it is possible that anthropogenic sound could result in masking of marine mammal communication and navigation signals. However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. The Q–20 ping duration is in milliseconds and the system is relatively low-powered making its range of effect smaller. Therefore, masking effects from the Q–20 sonar signals are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of above 35 kHz (the lower limit of the Q–20 signals), which overlaps with some marine mammal vocalizations; however, it would likely not mask the entirety of any particular vocalization or communication series because the pulse length, frequency, and duty cycle of the Q–20 sonar signal does not perfectly mimic the characteristics of any marine mammal's vocalizations.

*PTS, Injury, or Mortality*

Based on the Navy's model and NMFS analysis, it is unlikely that PTS, injury, or mortality of marine mammals would occur from the proposed Q–20 sonar testing activities. As discussed earlier, the lower source level (207–212 dB re 1 µPa at 1 m) and high attenuation rate of the HFAS signals (above 35 kHz) make it highly unlikely that any marine mammals in the vicinity would be injured (including PTS) or killed as a result of sonar exposure. Therefore, no take by Level A harassment, serious injury, or mortality is anticipated; nor would it be authorized under the proposed IHA.

Based on the aforementioned assessment, NMFS determines that approximately 399 bottlenose dolphins, 126 pantropical spotted dolphins, 315 Atlantic spotted dolphins, 126 spinner dolphins, 42 Clymene dolphins, and 42 striped dolphins would be affected by Level B behavioral harassment as a result of the proposed Q–20 sonar testing activities.

Based on the supporting analyses suggesting that no marine mammals would be killed, seriously injured, injured, or receive TTS as a result of the Q–20 sonar testing activities coupled with our assessment that these impacts will be of limited intensity and duration and likely not occur in areas and times critical to significant behavioral patterns such as reproduction, NMFS has preliminarily determined that the taking by Level B harassment of these species or stocks as a result of the Navy's Q–20 sonar test will have a negligible impact on the marine mammal species and stocks present in the Q–20 study area.

**Endangered Species Act**

Under section 7 of the ESA, the Navy has made a no effect determination on ESA-listed species (e.g., sperm whales, sea turtles, Gulf sturgeon, sawfish), an no critical habitat for ESA-listed species would be impacted; therefore, consultation with NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this proposed Q–20 testing is not required. NMFS (Permits and Conservation Division will also not formally consult with NMFS (Endangered Species Act Interagency Cooperation Division) on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Based on the analysis of the Navy Marine Resources Assessment (MRA) data on marine mammal distributions, there is near zero probability that the sperm whale will occur in the vicinity of the proposed Q–20 study area. No other ESA-listed marine mammal is expected to occur in the vicinity of the test area. In addition, acoustic modeling analysis indicates that none of the ESA-listed marine mammal species would be exposed to levels of sound that would constitute a ''take'' under the MMPA, due to the low source level and high attenuation rates of the Q–20 sonar signal.

**National Environmental Policy Act**

In 2009, the Navy prepared a ''Final Environmental Impact Statement/ Overseas Environmental Impact Statement for the NSWC PCD Mission Activities'' (FEIS/OEIS), and NMFS subsequently adopted the FEIS/OEIS for its rule governing the Navy's RDT&E activities in the NSWC PCD study area. With its IHA application, the Navy also prepared and submitted an ''Overseas Environmental Assessment Testing the AN/AQS–20A Mine Reconnaissance Sonar System in the NSWC PCD Testing Range, 2012–2014.'' To meet NMFS's National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements for the issuance of an IHA to the Navy, NMFS prepared an Environmental Assessment for the Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting High-Frequency Sonar Testing Activities in the Naval Surface Warfare Center Panama City Division'' and signed a FONSI on July 24, 2012 prior to the issuance of the IHA for the Navy's activities in July 2012 to July 2013. The currently proposed Q–20 sonar testing activities that would be covered by the proposed IHA from July 2013 to July 2014 are similar to the sonar testing activities described in the NMFS EA for the issuance of an IHA and the Navy's FEIS/OEIS and EA for NSWC PCD mission activities, and the effects of the proposed IHA fall within the scope of those documents and do not require further supplementation. Based on the public comments received in response to publication in the **Federal Register** notice and proposed IHA, NMFS will decide whether to reaffirm its FONSI before making a final determination on the IHA.

**Proposed Authorization**

NMFS proposes to issue an IHA authorizing the incidental take of six species of marine mammals, by Level B harassment, at levels specified in Table 2 (above) to the Navy for testing the Q–20 sonar system in non-territorial waters of the NSWC PCD testing range in the GOM, provided the proposed mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

**Information Solicited**

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS's preliminary determination of issuing an IHA (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 31, 2013.

**Helen M. Golde,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–13340 Filed 6–5–13; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC461**

### Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northeast Atlantic Ocean, June to July 2013

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of an Incidental Take Authorization (ITA).

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Lamont-Doherty Earth Observatory of Columbia University (L–DEO) to take marine mammals, by Level B harassment, incidental to conducting a marine geophysical (seismic) survey in the northeast Atlantic Ocean, June to July 2013.

**DATES:** Effective June 1 through August 25, 2013.

**ADDRESSES:** A copy of the final IHA and application are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contacts listed here.

A copy of the IHA application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

An ''Environmental Analysis of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* for the Northeast Atlantic Ocean, June-July 2013,'' was prepared by LGL Ltd., Environmental Research Associates, on behalf of the National Science Foundation (NSF) (which owns the R/V *Marcus G. Langseth*) and L–DEO (which operates the R/V *Marcus G. Langseth*). NMFS also issued a Biological Opinion under Section 7 of the Endangered Species Act (ESA) to evaluate the effects of the survey and IHA on marine species listed as threatened and endangered. The NMFS Biological Opinion is available online at: *http://www.nmfs.noaa.gov/pr/consultations/opinions.htm.* Documents cited in this notice may be viewed by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 101(a)(5)(D) of the MMPA, as amended (16 U.S.C. 1371 (a)(5)(D)), directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS's review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

**Summary of Request**

On January 8, 2013, NMFS received an application from the L–DEO requesting that NMFS issue an IHA for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting a marine seismic survey on the high seas (i.e., International Waters) and within the Exclusive Economic Zone of Spain during June to July 2013. L–DEO plans to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*) and a seismic airgun array to collect seismic data as part of the seismic survey in the northeast Atlantic Ocean. In addition to the operations of the seismic airgun array and hydrophone streamer, L–DEO intends to operate a multibeam echosounder and a sub-bottom profiler continuously throughout the survey. On March 21, 2013, NMFS published a notice in the **Federal Register** (78 FR 17359) making preliminary determinations and proposing to issue

an IHA. The notice initiated a 30 day public comment period.

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause a behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities and L–DEO has requested an authorization to take 20 species of marine mammals by Level B harassment. Take is not expected to result from the use of the multibeam echosounder or sub-bottom profiler, for reasons discussed in this notice; nor is take expected to result from collision with the source vessel because it is a single vessel moving at a relatively slow speed (4.6 knots [kts]; 8.5 kilometers per hour [km/hr]; 5.3 miles per hour [mph]) during seismic acquisition within the survey, for a relatively short period of time (approximately 39 days). It is likely that any marine mammal would be able to avoid the vessel.

**Description of the Specified Activity**

L–DEO plans to conduct a high energy, two-dimensional (2D) and three-dimensional (3D) seismic survey in the northeast Atlantic Ocean, west of Spain (see Figure 1 of the IHA application). Water depths in the survey area range from approximately 3,500 to greater than 5,000 meters (m) (11,482.9 to 16,404.2 feet [ft]). The seismic survey would be scheduled to occur for approximately 39 days during June 1 to July 14, 2013. Some minor deviation from these dates would be possible, depending on logistics and weather.

L–DEO plans to use conventional seismic methodology in the Deep Galicia Basin of the northeast Atlantic Ocean. The goal of the planned research is to collect data necessary to study rifted continental to oceanic crust transition in the Deep Galicia Basin west of Spain. This margin and its conjugate are among the best studied magma-poor, rifted margins in the world, and the focus of studies has been the faulting mechanics and modification of the upper mantle associated with such margins. Over the years, a combination of 2D reflection profiling, general marine geophysics, and ocean drilling have identified a number of interesting features of the margin. Among these are the S reflector, which has been interpreted to be detachment fault overlain with fault bounded, rotated, continental crustal blocks and underlain by serpentinized peridotite, and the Peridotite Ridge, composed of serpentized peridotite and thought to be upper mantle exhumed to the seafloor during rifting.

To achieve the project's goals, the Principal Investigators (PIs), Drs. D. S. Sawyer (Rice University), J. K. Morgan (Rice University), and D. J. Shillington (L–DEO) propose to use a 3D seismic reflection survey, 2D survey, and a long-offset seismic program extending through the crust and S detachment into the upper mantle to characterize the last stage of continental breakup and the initiation of seafloor spreading, relate post-rifting subsidence to syn-rifting lithosphere deformation, and inform the nature of detachment faults. Ocean Bottom Seismometers (OBSs) and Ocean Bottom Hydrophones (OBHs) would also be deployed during the program. It is a cooperative program with scientists from the United Kingdom, Germany, Spain, and Portugal.

The planned survey would involve one source vessel, the R/V *Marcus G. Langseth* (*Langseth*). The *Langseth* would deploy an array of 18 airguns as an energy source with a total volume of approximately 3,300 $in^3$. The receiving system would consist of four 6,000 m (19,685 ft) hydrophone streamers at 200 m (656.2 ft) spacing and up to 78 OBS and OBH instruments. The OBSs and OBHs would be deployed and retrieved by a second vessel, the R/V *Poseidon* (*Poseidon*), provided by the German Science Foundation. As the airgun array is towed along the survey lines, the hydrophone streamers would receive the returning acoustic signals and transfer the data to the on-board processing system. The OBS and OBHs record the returning acoustic signals internally for later analysis.

A total of approximately 5,834 km (3150.1 nautical miles [nmi]) of survey lines, including turns, will be shot in a grid pattern with a single line extending to the west (see Figure 1). There will be additional seismic operations in the survey area associated with equipment testing, ramp-up, and possible line changes or repeat coverage of any areas where initial data quality is sub-standard. In L–DEO's estimated take calculations, 25% has been added for those additional operations.

In addition to the operations of the airgun array, a Kongsberg EM 122 multibeam echosounder and a Knudsen Chirp 3260 sub-bottom profiler will also be operated from the *Langseth* continuously throughout the survey. All planned geophysical data acquisition activities would be conducted by L–DEO with on-board assistance by the scientists who have planned the study. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

*Dates, Duration, and Specified Geographic Region*

The planned survey would encompass the area between approximately 41.5 to 42.5°North and approximately 11.5 to 17.5°West in the northeast Atlantic Ocean to the west of Spain. The cruise will be in International Waters (i.e., high seas) and in the Exclusive Economic Zone (EEZ) of Spain in water depths ranging from approximately 3,500 to greater than 5,000 m (see Figure 1 of the IHA application). The exact dates of the planned activities depend on logistics and weather conditions. The *Langseth* would depart from Lisbon, Portugal or Vigo, Spain on June 1, 2013 and spend approximately 1 day in transit to the survey area. The seismic survey is expected to take approximately 39 days, with completion on approximately July 12, 2013. When the survey is completed, the *Langseth* will then transit back to Lisbon, Portugal or Vigo, Spain.

NMFS outlined the purpose of the program in a previous notice for the proposed IHA (78 FR 17359, March 21, 2013). The activities to be conducted have not changed between the proposed IHA notice and this final notice announcing the issuance of the IHA. For a more detailed description of the authorized action, including vessel and acoustic source specifications, the reader should refer to the notice for the proposed IHA (78 FR 17539, March 21, 2013), the IHA application, EA, and associated documents referenced above this section.

**Comments and Responses**

A notice of the proposed IHA for the L–DEO seismic survey was published in the **Federal Register** on March 21, 2013 (78 FR 17359). During the 30 day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and private individuals. The Commission and private individual's comments are online at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are their substantive comments and NMFS's responses.

*Comment 1:* The Commission recommends that NMFS require L–DEO to re-estimate the proposed buffer and exclusion zones and associated takes of marine mammals using the greatest sound speed from the survey area if sound at any depth travels at a speed greater than 1,521.6 m/second.

*Response:* Based upon the best available information and our analysis of the likely effects of the specified activity on marine mammals and their habitat, we are satisfied that the data

supplied by L–DEO and the information that we evaluated in the proposal including the referenced documents comprise the best available information on the likely effects of the activities on marine mammals. These data are sufficient to inform our analysis and determinations under the MMPA, ESA of 1973 (16 U.S.C. 1531 *et seq.*), and the National Environmental Policy Act (NEPA). The identified buffer and exclusion zones are appropriate for the survey. Thus, for this survey, we will not require L–DEO to re-estimate the proposed exclusion zones and buffer zones and associated number of marine mammal takes using operational and site-specific environmental parameters.

L–DEO has predicted received sound levels in the action area using their acoustic model (Diebold *et al.,* 2010) as a function of distance from the airguns for the 36-airgun array and for a single 40-cubic inch ($in^3$) airgun. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half space (an infinite homogeneous water column, not bounded by a seafloor). Because the L–DEO model assumes a homogeneous water column, the sound speed is held constant. For consistency with prior work by Dr. John Diebold, recent model results for the mitigation radii have been derived using 1,521.6 m/second, which in the airgun modeling software corresponds to a water temperature of 20 degrees Celsius. The mitigation radii are measured from the width of the isopleths at depth. The 180 dB (rms) isopleth, is broadest at around 450 to 500 m (1,476.4 to 1,640.4 ft) water depth, which provides a radius of 568 m (1,863.5 ft) around the sound source for the PSOs to monitor and mitigate for protected species. For the 160 dB (rms) level, the depth at which the radius is measured is 2,000 m (6,561.7ft), as the isopleth attains its broadest width at larger depths not relevant for marine mammal mitigation. Thus, the choice of a constant value for input to deep water modeling needs to be compared to the average sound speed value through the first 450 to 500 m of water in the area, for the 180 dB (rms) radius, and compared to the average sound speed value to the first 2,000 m, for the 160 dB (rms) radius: the presence of possibly higher sound speed in a localized region near the sea surface would not, in itself alone, impact radii estimates. Measured sound speed profiles in the Gulf of Mexico presented in Figure 15 of Diebold *et al.* (2010) shows that there, 1,521 m/second is actually higher than the average speed through the first 450 to 500 m, and through the entire 1,700 m (5,577.4 ft) of the water column. No site-specific information is used in the L–DEO modeling. The value of 1,521.6 m/second is presently used to derive all models. A quick search for information in the vicinity of the planned northeast Atlantic Ocean survey area suggests that 1,521.6 m/second is not an unreasonably low value to use an average for input to the model. Overall, the choice of the constant sound speed is a secondary factor governing model results, the main assumption remains that of a homogeneous water layer.

Because the model by Dr. John Diebold cannot be adjusted to add environmental parameters, L–DEO would require another modeling approach to modify the sound speed profile to match site-specific parameters. The goal of the L–DEO modeling is to have a model that is broadly applicable and not have the typical data limitations and significant parameter assumptions that often limit utility of ''site specific'' investigations. Usage of the 1,521.6 m/second is a reasonable model variable for this survey location, and for most others. Typically, ocean temperatures, which influence the speed of sound propagation through water, are most variable towards the ocean surface, and become more constant at depth. The deep-water mitigation radii calculated by the Diebold modeling for the *Langseth's* airgun array are determined from the spread of the acoustic source from the full airgun array and is at its widest in deeper waters, not near the sea surface (see Figure 2 of the NSF/USGS PEIS [Diebold *et al.,* 2010]). The deep-water mitigation radii predicted by the L–DEO model were previously shown to be conservative in the Gulf of Mexico (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010). Therefore, using a maximum sound speed variable for the model, which at this site would likely be at the surface, would be less reflective of the entire water column and a poorer value to use in the model.

Of note, in cold water scenarios, use of the 1,521.6 m/second as an average for the entire water column might actually yield overestimated radii. Although the model might yield results that would be generally even more conservative, we continue to use the existing radii determined with 1,521.6 m/second in cold water scenarios anyway. Therefore, while the sound speed can be adjusted in the L–DEO model, the model has already been shown to be conservative in temperate locations and increasing the sound speed calculations in areas in colder temperatures would only make the model generally more conservative in its radii predictions.

L–DEO's application and NSF's environmental analysis includes detailed information on the study, and their modeling process of the calibration experiment in shallow, intermediate, and deep water. Additionally, the conclusions in Appendix H of the ''2011 Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement for Marine Seismic Research Funded by the National Science Foundation or Conducted by the U.S. Geological Survey'' (NSF/USGS PEIS, 2011) also show that L–DEO's model represents the actual produced sound levels, particularly within the first few kilometers, where the predicted zone (i.e., exclusion zone) lie. At greater distances, local oceanographic variations begin to take effect, and L–DEO's model tends to over predict zones. Because the modeling matches the observed measurement data, the authors concluded that those using the models to predict zones can continue to do so, including predicting exclusion zones around the vessel for various tow depths. At present, L–DEO's model does not account for site-specific environmental conditions and the calibration study analysis of the model predicted that using site-specific information may actually estimate less conservative exclusion zones at greater distances.

While it is difficult to estimate exposures of marine mammals to acoustic stimuli, NMFS is confident that L–DEO's approach to quantifying the exclusion and buffer zones uses the best available scientific information and estimation methodologies.

*Comment 2:* The Commission recommends that NMFS require L–DEO to correct beaked whale and fin whale density estimates using the 95 percent confidence intervals and recalculate the estimated numbers of takes—the corrected beaked whale density then should be applied to all beaked whale species (including Cuvier's beaked whale, northern bottlenose whale, and *Mesoplodon* spp.).

*Response:* Confidence intervals are used to indicate reliability of an estimate and indicate the variation that could occur if animal distribution was the same at the time of the planned seismic survey as during the survey when the data was collected. It is not possible to ''correct'' densities using confidence intervals, as the given mean is the best estimate, although confidence intervals could possibly be used to estimate maximum densities (i.e., the

confidence interval themselves or the data required to calculate them [an estimate of variance and the sample size). However, below we describe why we do not think it is appropriate to apply confidence intervals to estimate maximum densities for beaked whales.

L–DEO has used Cuvier's beaked whale density to estimate density for all beaked whale species. However, Cuvier's beaked whale was by far the most abundant whale seen (13 to 15 sightings) in the southern part of the study area (the Bay of Biscay and off northwest Spain) during the surveys that gave densities for beaked whales as a group, likely resulting in overestimates for density for the other species. Therefore, it is not appropriate to add another layer of potential overestimation in density by using the 95% confidence interval. Sowerby's beaked whale the northern bottlenose whale were abundant (the only beaked whale identified) in the northwestern part of the study area (off the United Kingdom).

NMFS used IWC (2007) data for the northeast and north-central Atlantic Ocean to estimate fin whale density and estimate the number of potential takes by Level B harassment. The NMFS Biological Opinion describes the exposure analysis and is available online at: *http://www.nmfs.noaa.gov/pr/consultations/opinions.htm.*

*Comment 3:* The Commission recommends that NMFS require a clearance time of 60 minutes for deep-diving species (i.e., beaked whales and sperm whales) if the animal was not observed to have left the exclusion zone after a power-down or shut-down.

*Response:* NMFS recognizes that several species of deep-diving cetaceans are capable of remaining underwater for more than 30 minutes (e.g., sperm whales and several species of beaked whales); however, for the following reasons NMFS believes that 30 minutes is an adequate length for the monitoring period prior to the ramp-up of the airguns:

(1) Because the *Langseth* is required to monitor before ramp-up of the airgun array, the time monitoring prior to the start-up of any but the smallest array is effectively longer than 30 minutes (ramp-up will begin with the smallest airgun in the array and airguns will be added in sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per five minute period over a total duration of about 30 minutes);

(2) In many cases Protected Species Observers (PSOs) are observing during times when L–DEO is not operating the seismic airguns and would observe the area prior to the 30-minute observation period;

(3) The majority of the species that may be exposed do not stay underwater more than 30 minutes;

(4) All else being equal and if deep-diving individuals happened to be in the area in the short time immediately prior to the pre-ramp-up monitoring, if an animal's maximum underwater dive time is 45 minutes, then there is only a one in three chance that the last random surfacing would occur prior to the beginning of the required 30-minute monitoring period and that the animal would not be seen during that 30-minute period; and

(5) Finally, seismic vessels are moving continuously (because of the long, towed airgun array and streamer) and NMFS believes that unless the animal submerges and follows at the speed of the vessel (highly unlikely, especially when considering that a significant part of their movement is vertical [deep-diving]), the vessel will be far beyond the length of the exclusion zone within 30 minutes, and therefore it will be safe to start the airguns again.

*Comment 4:* The Commission recommends that NMFS provide additional justification for its preliminary determination that the proposed monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the exclusion and buffer zones—such justification should (1) identify those species that NMFS believes can be detected with a high degree of confidence using visual monitoring only under the expected environmental conditions; (2) describe detection probability as a function of distance from the vessel; (3) describe changes in detection probability under various sea state and weather conditions and light levels; and (4) explain how close to the vessel marine mammals must be for PSOs to achieve high nighttime detection rates.

*Response:* NMFS believe that the planned monitoring program would be sufficient to detect (using visual monitoring and passive acoustic monitoring), with reasonable certainty, marine mammals within or entering the identified exclusion zones. Also, NMFS expects some animals to avoid areas around the airgun array ensonified at the level of the exclusion zone.

NMFS acknowledge that the detection probability of certain species of marine mammals varies depending on the animal's size and behavior, as well as sea state, weather conditions, and light levels. The detectability of marine mammals likely decreases in low light (i.e., darkness), higher Beaufort sea state and wind conditions, and poor weather (e.g., fog and/or rain). However, at present, NMFS view the combination of visual monitoring and passive acoustic monitoring as the most effective monitoring and mitigation techniques available for detecting marine mammals within or entering the exclusion zone. The final monitoring and mitigation measures are the most effective and feasible measures, and NMFS is not aware of any additional measures which could meaningfully increase the likelihood of detecting marine mammals in and around the exclusion zone. Further, public comment has not revealed any additional monitoring and mitigation measures that could be feasibly implemented to increase the effectiveness of detection.

NSF and L–DEO are receptive to incorporating proven technologies and techniques to enhance the current monitoring and mitigation program. Until proven technological advances are made, nighttime mitigation measures during operations include combinations of the use of PSOs for ramp-ups, passive acoustic monitoring, night vision devices provided to PSOs, and continuous shooting of a mitigation airgun. Should the airgun array be powered-down the operation of a single airgun would continue to serve as a sound deterrent to marine mammals. In the event of a complete shut-down of the airgun array at night for mitigation or repairs, L–DEO suspends the data collection until 30 minutes after nautical twilight-dawn (when PSOs are able clear the exclusion zone). L–DEO will not activate the airguns until the entire exclusion zone is visible and free of marine mammals for at least 30 minutes.

In cooperation with NMFS, L–DEO will be conducting efficacy experiments of night vision devices during a future *Langseth* cruise. In addition, in response to a recommendation from NMFS, L–DEO is evaluating the use of forward-looking thermal imaging cameras to supplement nighttime monitoring and mitigation practices. During other seismic and seafloor mapping surveys throughout the world, L–DEO has successfully used these devices while conducting nighttime seismic operations.

*Comment 5:* The Commission recommends that NMFS consult with the relevant entities (i.e., L–DEO, NSF, U.S. Geological Survey [USGS]) to develop, validate, and implement a monitoring program that provides a scientifically sound, reasonably accurate assessment of the types of marine mammal taking and the numbers of marine mammals taken—the assessment

should account for availability and detection biases associated with the geophysical survey observers.

*Response:* There will be periods of transit time during the cruise, and PSOs will be on watch prior to and after the seismic portions of the surveys, in addition to during the surveys. The collection of this visual observational data by PSOs may contribute to baseline data on marine mammals (presence/absence) and provide some generalized support for estimated take numbers, but it is unlikely that the information gathered from these cruises along would result in any statistically robust conclusions for any particular species because of the small number of animals typically observed.

NMFS acknowledges the Commission's recommendations and is open to further coordination with the Commission, NSF (the vessel owner) and L–DEO (the ship operator on behalf of NSF), to develop, validate, and implement a monitoring program that will provide or contribute towards a more scientifically sound and reasonably accurate assessment of the types of marine mammal taking and the number of marine mammals taken.

For clarification purposes, USGS is not participating or involved in L–DEO's action (i.e., the science endeavor) that has been funded by NSF. USGS is a separate Federal agency that is part of the Department of Interior, while NSF is an independent Federal agency.

*Comment 6:* Several private citizens opposed the issuance of the IHA by NMFS and the conduct of the marine seismic survey in the northeast Atlantic Ocean by L–DEO and NSF. The commenters state that they do not support the use of government funds to conduct a seismic survey for oil and gas purposes in the Atlantic Ocean or anywhere else. The commenters state that numerous strandings and deaths of marine mammals are linked to acoustic trauma caused by activities using seismic airguns and sonar. The airguns pose serious threats to endangered North Atlantic right, humpback, sei, fin, blue, and sperm whales. They also believe that using lookouts (i.e., PSOs) for marine mammals is ineffective, especially since the activities will be occurring in deep waters where deep-diving animals spend most of their lives underwater and not on the surface where they cannot be detected.

*Response:* L–DEO's planned seismic survey is not being conducted for oil and gas exploration purposes, it is for academic science and research. As described in detail in the **Federal Register** notice for the proposed IHA (78 FR 17359, March 21, 2013), as well as in this document, NMFS does not believe that L–DEO's marine seismic survey would cause injury, serious injury, or mortality to marine mammals, nor are those authorized under the IHA. The required monitoring and mitigation measures that L–DEO would implement during the seismic survey would further reduce the adverse effect on marine mammals to the lowest levels practicable. NMFS anticipates only behavioral disturbance to occur during the conduct of the seismic survey. L–DEO's planned activities is for scientific research purposes, it is not for oil and gas exploration or considered a military readiness activity.

**Description of the Marine Mammals in the Specified Geographic Area of the Specified Activity**

Thirty-nine marine mammal species (36 cetaceans [whales, dolphins, and porpoises]) (29 odontocetes and 7 mysticetes] and 3 pinnipeds [seals and sea lions]) are known to or could occur in the eastern North Atlantic study area. Several of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including the North Atlantic right (*Eubalaena glacialis*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whales. Nine cetacean species, although present in the wider eastern North Atlantic ocean, likely would not be found near the study area at approximately 42° North because their ranges generally do not extend south of approximately 45° North in the northeastern Atlantic waters (i.e., Atlantic white-sided dolphin [*Lagenorhynchus acutus*] and white-beaked dolphin [*Lagenorhynchus albirostris*]), or their ranges in the northeast Atlantic ocean generally do not extend north of approximately 20° North (Clymene dolphin [*Stenella clymene*]), 30° North (Fraser's dolphin [*Lagenodelphis hosei*]), 34 ° North (spinner dolphin [*Stenella longirostris*]), 35 ° North (melon-headed whale [*Peponocephala electra*]), 37 ° North (rough-toothed dolphin [*Steno bredandensis*]), or 40 ° North (Bryde's whale [*Balaenoptera brydei*] and pantropical spotted dolphin [*Stenella attenuata*]). Although Spitz *et al.* (2011) reported two strandings records of melon-headed whales for the Bay of Biscay, this species will not be discussed further, as it is unlikely to occur in the survey area.

The harbor porpoise (*Phocoena phocoena*) does not occur in deep offshore waters. No harbor porpoise were detected visually or acoustically during summer surveys off the continental shelf in the Biscay Bay area during 1989 and 2007 (Lens, 1991; Basto d'Andrade, 2008; Anonymous, 2009). Pinniped species are also not known to occur in the deep waters of the survey area.

General information on the taxonomy, ecology, distribution, and movements, and acoustic capabilities of marine mammals are given in sections 3.6.1 and 3.7.1 of the ''Final Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement for Marine Seismic Research Funded by the National Science Foundation or Conducted by the U.S. Geological Survey'' (NSF/USGS PEIS). One of the qualitative analysis areas defined in the PEIS is on the Mid-Atlantic Ridge, at 26° North, 40 ° West, approximately 2,800 km (1,511.9 nmi) from the survey area. The general distribution of mysticetes and odontocetes in the North Atlantic Ocean is discussed in sections 3.6.3.4 and 3.7.3.4 of the NSF/USGS PEIS, respectively. The rest of this section deals specifically with species distributions off the north and west coast of the Iberian Peninsula.

Several systematic surveys have been conducted in the Bay of Biscay area, which has been found to be one of the most productive areas and the center of highest cetacean diversity in the northeast Atlantic Ocean (Hoyt, 2005). The second North Atlantic Sightings Survey (NASS) occurred in waters off the continental shelf from the southern U.K. to northern Spain in July to August, 1989 (Lens, 1991). The Cetacean Offshore Distribution and Abundance in the European Atlantic (CODA) included surveys from the U.K. to southern Spain during July, 2007 (Basto d'Andrade, 2008; Anonymous, 2009). Additional information is available from coastal surveys off northwest Spain (e.g., Lopez *et al.,* 2003), and sighting records off western central (Brito *et al.,* 2009) and southern Portugal (Castor *et al.,* 2010). Records from the Ocean Biogeographic Information System (OBIS) database hosted by Rutgers and Duke University (Read *et al.,* 2009) were also included. Table 1 (below) presents information on the abundance, distribution, population status, and conservation status of the species of marine mammals that may occur in the study area during June to July, 2013.

TABLE 1—THE HABITAT, REGIONAL ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS THAT MAY OCCUR IN OR NEAR THE SEISMIC SURVEY AREA IN THE NORTHEAST ATLANTIC OCEAN

[See text and Table 3 in L–DEO's application for further details.]

| Species | Habitat | Population estimate in the North Atlantic | ESA[1] | MMPA[2] |
|---|---|---|---|---|
| **Mysticetes** | | | | |
| North Atlantic right whale (*Eubalaena glacialis*). | Pelagic, shelf and coastal | 396[3] | EN | D. |
| Humpback whale (*Megaptera novaeangliae*). | Mainly nearshore, banks | 11,570[4] | EN | D. |
| Minke whale (*Balaenoptera acutorostrata*). | Pelagic and coastal | 121,000[5] | NL | NC. |
| Sei whale (*Balaenoptera borealis*). | Primarily offshore, pelagic | 12,000 to 13,000[6] | EN | D. |
| Fin whale (*Balaenoptera physalus*). | Continental slope, pelagic | 24,887[7] | EN | D. |
| Blue whale (*Balaenoptera musculus*). | Pelagic, shelf, coastal | 937[8] | EN | D. |
| **Odontocetes** | | | | |
| Sperm whale (*Physeter macrocephalus*). | Pelagic, deep sea | 13,190[9] | EN | D. |
| Pygmy sperm whale (*Kogia breviceps*). | Deep waters off the shelf | 395[3,10] | NL | NC. |
| Dwarf sperm whale (*Kogia sima*). | Deep waters off the shelf | | NL | NC. |
| Cuvier's beaked whale (*Ziphius cavirostris*). | Slope and Pelagic | 6,992[11]<br>100,000[12] | NL | NC. |
| Northern bottlenose whale (*Hyperoodon ampullatus*). | Pelagic | 40,000[13] | NL | NC. |
| True's beaked whale (*Mesoplodon mirus*). | Pelagic | 6,992[11] | NL | NC. |
| Gervais' beaked whale (*Mesoplodon europaeus*). | Pelagic | 6,992[11] | NL | NC. |
| Sowerby's beaked whale (*Mesoplodon bidens*). | Pelagic | 6,992[11] | NL | NC. |
| Blainville's beaked whale (*Mesoplodon densirostris*). | Pelagic | 6,992[11] | NL | NC. |
| Bottlenose dolphin (*Tursiops truncatus*). | Coastal, oceanic, shelf break. | 19,295[14] | NL | NC D—Western North Atlantic coastal. |
| Atlantic spotted dolphin (*Stenella frontalis*). | Shelf, offshore | 50,978[3] | NL | NC. |
| Striped dolphin (*Stenella coeruleoalba*). | Off continental shelf | 67,414[14] | NL | NC. |
| Short-beaked common dolphin (*Delphinus delphis*). | Shelf, pelagic, seamounts | 116,709[14] | NL | NC. |
| Risso's dolphin (*Grampus griseus*). | Deep water, seamounts | 20,479[3] | NL | NC. |
| Pygmy killer whale (*Feresa attenuata*). | Pelagic | NA | NL | NC. |
| False killer whale (*Pseudorca crassidens*). | Pelagic | NA | NL | NC. |
| Killer whale (*Orcinus orca*) | Pelagic, shelf, coastal | NA | NL EN—Southern resident | NC D—Southern resident, AT1 transient. |
| Short-finned pilot whale (*Globicephala macrorhynchus*). | Pelagic, shelf coastal | 780,000[15] | NL | NC. |
| Long-finned pilot whale (*Globicephala melas*). | Mostly pelagic | | NL | NC. |

NA = Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, NC = Not Classified.
[3] Western North Atlantic, in U.S. and southern Canadian waters (Waring *et al.,* 2012).
[4] Likely negatively biased (Stevick *et al.,* 2003).
[5] Central and Northeast Atlantic (IWC, 2012).
[6] North Atlantic (Cattanach *et al.,* 1993).
[7] Central and Northeast Atlantic (Vikingsson *et al.,* 2009).
[8] Central and Northeast Atlantic (Pike *et al.,* 2009).
[9] For the northeast Atlantic, Faroes-Iceland, and the U.S. east coast (Whitehead, 2002).
[10] Both *Kogia* species.
[11] For all beaked whales (Anonymous, 2009).
[12] Worldwide estimate (Taylor *et al.,* 2008).

[13] Eastern North Atlantic (NAMMCO, 1995).
[14] European Atlantic waters beyond the continental shelf (Anonymous, 2009).
[15] *Globicephala* spp. combined, Central and Eastern North Atlantic (IWC, 2012).

Refer to sections 3 and 4 of L–DEO's application for detailed information regarding the abundance and distribution, population status, and life history and behavior of these other marine mammal species and their occurrence in the project area. The application also presents how L–DEO calculated the estimated densities for the marine mammals in the survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the IHA.

**Potential Effects on Marine Mammals**

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the survey area. The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007).

Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the planned project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term. NMFS described the range of potential effects from the activity in the notice of the proposed IHA (78 FR 17359, March 21, 2013). A more comprehensive review of these issues can be found in the NSF/USGS (2011).

The notice of the proposed IHA (78 FR 17359, March 21, 2013) included a discussion of the effects of sounds from airguns on mysticetes and odontocetes including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. NMFS refers the reader to L–DEO's application and EA for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels.

**Anticipated Effects on Marine Mammal Habitat**

NMFS included a detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates in the notice of the proposed IHA (78 FR 17359, March 21, 2013). The seismic survey will not result in any permanent impact on habitats used by the marine mammals in the survey area, including the food sources they use (i.e., fish and invertebrates), and there will be no physical damage to any habitat. While NMFS anticipates that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible, which was considered in further detail in the notice of the proposed IHA (78 FR 17359, March 21, 2013), as behavioral modification. The main impact associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

**Mitigation**

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

L–DEO has reviewed the following source documents and has incorporated a suite of appropriate mitigation measures into their project description.

(1) Protocols used during previous NSF and USGS-funded seismic research cruises as approved by NMFS and detailed in the recently completed ''Final Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement for Marine Seismic Research Funded by the National Science Foundation or Conducted by the U.S. Geological Survey;''

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO and/or its designees shall implement the following mitigation measures for marine mammals:

(1) Planning phase mitigation;

(2) Exclusion zones around the airgun(s);

(3) Power-down procedures;

(4) Shut-down procedures;

(5) Ramp-up procedures; and

(6) Special procedures for situations or species of concern.

*Planning Phase*—Mitigation of potential impacts from the planned activities begins during the planning phases of the planned activities. Part of the considerations was whether the research objectives could be met with a smaller source than the full, 36-airgun array (6,600 $in^3$) used on the *Langseth,* and it was decided that the scientific objectives could be met using two 18-airgun arrays, operating in ''flip-flop'' mode, and towed at a depth of approximately 9 m. Thus, the source volume will not exceed 3,300 $in^3$ at any time.

*Exclusion Zones*—L–DEO use radii to designate exclusion and buffer zones and to estimate take for marine mammals. Table 2 (see below) shows the distances at which one would expect marine mammal exposures to received sound levels (160 and 180/190 dB) from the 18 airgun array and a single airgun. (The 180 dB level shut-down criteria are applicable to cetaceans as specified by NMFS [2000].) L–DEO used these levels to establish the exclusion and buffer zones.

Received sound levels have been modeled by L–DEO for a number of airgun configurations, including the 18 airguns, in relation to distance and direction from the airguns (see Figures 2 and 3 of the IHA application). The model does not allow for bottom interaction, and is most directly applicable to deep water. Based on the modeling, estimates, of the maximum distances from the airguns where sound levels are predicted to be 180, and 160 dB re 1 Pa (rms) in deep water were determined (see Table 2 below).

Empirical data concerning the 190, 180, and 160 dB (rms) distances were acquired for various airgun arrays based on measurements during the acoustic verification studies conducted by L–

DEO in the northern GOM in 2003 (Tolstoy *et al.,* 2004) and 2007 to 2008 (Tolstoy *et al.,* 2009). The empirical data for the 6, 10, 12, and 20 airgun arrays indicate that, for deep water, the L–DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.,* 2004). The 180 dB (rms) radius is the shut-down criteria applicable to cetaceans as specified by NMFS (2000); these levels were used to establish exclusion zones. Therefore, the assumed 180 dB radii are 568 m (1,863.5 ft), respectively. If the PSO detects a marine mammal(s) within or about to enter the appropriate exclusion zone, the airguns will be shut-down immediately.

Table 2 summarizes the predicted distances at which sound levels (160 and 180 dB [rms]) are expected to be received from the 18 airgun array and a single airgun operating in deep water depths.

TABLE 2—MEASURED (ARRAY) OR PREDICTED (SINGLE AIRGUN) DISTANCES TO WHICH SOUND LEVELS ≥ 180 AND 160 DB RE: 1 μPA (RMS) COULD BE RECEIVED IN DEEP WATER DURING THE SURVEY IN THE NORTHEAST ATLANTIC OCEAN, JUNE TO JULY, 2013.

| Sound source and volume | Tow depth (m) | Water depth (m) | Predicted RMS radii distances (m) | |
|---|---|---|---|---|
| | | | 180 dB | 160 dB |
| Single Bolt airgun (40 in$^3$) ..... | 9 | >1,000 | 100 m (328.1 ft) ..... | 385 m (1,263.1 ft) |
| 18 airguns (3,300 in$^3$) ..... | 9 | >1,000 | 568 m (1,863.5 ft) ..... | 4,550 m (14,927.8 ft) |

If the Protected Species Visual Observer (PSVO) detects marine mammal(s) within or about to enter the appropriate exclusion zone, the *Langseth* crew will immediately power-down the airgun array, or perform a shut-down if necessary (see ''Shut-down Procedures'').

*Power-down Procedures*—A power-down involves decreasing the number of airguns in use to one airgun, such that the radius of the 180 dB zone is decreased to the extent that the observed marine mammal(s) are no longer in or about to enter the exclusion zone for the full airgun array. A power-down of the airgun array can also occur when the vessel is moving from the end of one seismic trackline to the start of the next trackline. During a power-down for mitigation, L–DEO will operate one airgun. The continued operation of one airgun is intended to (a) alert marine mammals to the presence of the seismic vessel in the area; and, (b) retain the option of initiating a ramp-up to full operations under poor visibility conditions. In contrast, a shut-down occurs when all airgun activity is suspended.

If the PSVO detects a marine mammal outside the exclusion zone and is likely to enter the exclusion zone, L–DEO will power-down the airguns to reduce the size of the 180 dB exclusion zone before the animal is within the exclusion zone. Likewise, if a mammal is already within the exclusion zone, when first detected L–DEO will power-down the airguns immediately. During a power-down of the airgun array, L–DEO will operate the single 40 in$^3$ airgun, which has a smaller exclusion zone. If the PSVO detects a marine mammal within or near the smaller exclusion zone around that single airgun (see Table 1), L–DEO will shut-down the airgun (see next section).

*Resuming Airgun Operations After a Power-down*—Following a power-down, the *Langseth* will not resume full airgun activity until the marine mammal has cleared the 180 dB exclusion zone (see Table 2). The PSO will consider the animal to have cleared the exclusion zone if:

- The observer has visually observed the animal leave the exclusion zone, or

An observer has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); The *Langseth* crew will resume operating the airguns at full power after 15 minutes of sighting any species with short dive durations (i.e., small odontocetes or pinnipeds). Likewise, the crew will resume airgun operations at full power after 30 minutes of sighting any species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

Because the vessel has transited away from the vicinity of the original sighting during the 8 minute period, implementing ramp-up procedures for the full array after an extended power-down (i.e., transiting for an additional 35 minutes from the location of initial sighting) would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zone for the full source level and would not further minimize the potential for take. The *Langseth's* PSOs are continually monitoring the exclusion zone for the full source level while the mitigation airgun is firing. On average, PSOs can observe to the horizon (10 km or 5.4 nmi) from the height of the *Langseth's* observation deck and should be able to state with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming airgun operations at full power.

*Shut-down Procedures*—L–DEO will shut-down the operating airgun(s) if a marine mammal is seen within or approaching the exclusion zone for the single airgun. L–DEO will implement a shut-down:

(1) If an animal enters the exclusion zone of the single airgun after L–DEO has initiated a power-down; or

(2) If an animal is initially seen within the exclusion zone of the single airgun when more than one airgun (typically the full airgun array) is operating (and it is not practical or adequate to reduce exposure to less than 180 dB [rms]).

*Resuming Airgun Operations After a Shut-down*—Following a shut-down in excess of 8 minutes, the *Langseth* crew will initiate a ramp-up with the smallest airgun in the array (40 in$^3$). The crew will turn on additional airguns in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per five-minute period over a total duration of approximately 30 minutes. During ramp-up, the PSOs will monitor the exclusion zone, and if he/she sights a marine mammal, the *Langseth* crew will implement a power-down or shut-down as though the full airgun array were operational.

During periods of active seismic operations, there are occasions when the *Langseth* crew will need to temporarily shut-down the airguns due to equipment failure or for maintenance. In this case, if the airguns are inactive longer than eight minutes, the crew will follow ramp-up procedures for a shut-down described earlier and the PSOs will monitor the full exclusion zone and

will implement a power-down or shut-down if necessary.

If the full exclusion zone is not visible to the PSO for at least 30 minutes prior to the start of operations in either daylight or nighttime, the *Langseth* crew will not commence ramp-up unless at least one airgun (40 $in^3$ or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the vessel's crew will not ramp-up the airgun array from a complete shut-down at night or in thick fog, because the outer part of the zone for that array will not be visible during those conditions.

If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The vessel's crew will not initiate ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones during the day or close to the vessel at night.

*Ramp-up Procedures*—Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to ''warn'' marine mammals in the vicinity of the airguns, and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities. L–DEO will follow a ramp-up procedure when the airgun array begins operating after an 8 minute period without airgun operations or when a shut-down has exceeded that period. L–DEO has used similar periods (approximately 8 to 10 min) during previous L–DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 $in^3$). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding six dB per five minute period over a total duration of approximately 35 minutes. During ramp-up, the PSOs will monitor the exclusion zone, and if marine mammals are sighted, L–DEO will implement a power-down or shut-down as though the full airgun array were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, L–DEO will not commence the ramp-up unless at least one airgun (40 $in^3$ or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. L–DEO will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable exclusion zones.

*Use of a Small-Volume Airgun During Turns and Maintenance*

Throughout the seismic survey, particularly during turning movements, and short-duration equipment maintenance activities, L–DEO will employ the use of a small-volume airgun (i.e., 40 $in^3$ ''mitigation airgun'') to deter marine mammals from being within the immediate area of the seismic operations. The mitigation airgun would be operated at approximately one shot per minute and would not be operated for longer than three hours in duration (turns may last two to three hours for the project).

During turns or brief transits (e.g., less than three hours) between seismic tracklines, one mitigation airgun will continue operating. The ramp-up procedure will still be followed when increasing the source levels from one airgun to the full airgun array. However, keeping one airgun firing will avoid the prohibition of a ''cold start'' during darkness or other periods of poor visibility. Through use of this approach, seismic operations may resume without the 30 minute observation period of the full exclusion zone required for a ''cold start,'' and without ramp-up if operating with the mitigation airgun for under 8 minutes. PSOs will be on duty whenever the airguns are firing during daylight, during the 30 minute periods prior to ramp-ups.

*Special Procedures for Situations or Species of Concern*—It is unlikely that a North Atlantic right whale would be encountered, but if so, the airguns will be shut-down immediately if one is sighted at any distance from the vessel because of its rarity and conservation status. The airgun array shall not resume firing until 30 minutes after the last documented whale visual sighting. Concentrations of humpback, sei, fin, blue, and/or sperm whales will be avoided if possible (i.e., exposing concentrations of animals to 160 dB), and the array will be powered-down if necessary. For purposes of this planned survey, a concentration or group of whales will consist of three or more individuals visually sighted that do not appear to be traveling (e.g., feeding, socializing, etc.).

NMFS has carefully evaluated the applicant's mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

**Monitoring and Reporting**

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

*Monitoring*

L–DEO will conduct marine mammal monitoring during the seismic survey, in order to implement the mitigation measures that require real-time monitoring. L–DEO's ''Monitoring Plan'' is described below this section. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same region. L–DEO is prepared to discuss coordination of their monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

*Vessel-Based Visual Monitoring*

L–DEO's PSVOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any ramp-ups of the airguns at

night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shut-down (i.e., greater than approximately 8 minutes for this cruise). When feasible, PSVOs will conduct observations during daytime periods when the seismic system is not operating (such as during transits) for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSVO observations, the airguns will be powered-down or shut-down when marine mammals are observed within or about to enter a designated exclusion zone.

During seismic operations in the northeast Atlantic Ocean off of Spain, at least five PSOs (four PSVOs and one Protected Species Acoustic Observer [PSAO]) will be based aboard the *Langseth*. L–DEO will appoint the PSOs with NMFS's concurrence. Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, two PSVOs will be on duty from the observation tower (i.e., the best available vantage point on the source vessel) to monitor marine mammals near the seismic vessel. Use of two simultaneous PSVOs will increase the effectiveness of detecting animals near the source vessel. However, during meal times and bathroom breaks, it is sometimes difficult to have two PSVOs on effort, but at least one PSVO will be on duty. PSVO(s) will be on duty in shifts no longer than 4 hours in duration.

Two PSVOs will also be on visual watch during all daytime ramp-ups of the seismic airguns. A third PSAO will monitor the PAM equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two PSVOs on duty from the observation tower, and a third PSAO on PAM. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction on how to do so.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the PSVO will have a good view around the entire vessel. During daytime, the PSVO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. During darkness, night vision devices will be available (ITT F500 Series Generation 3 binocular—image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation.

When marine mammals are detected within or about to enter the designated exclusion zone, the airguns will immediately be powered-down or shut-down if necessary. The PSVO(s) will continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the exclusion zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

*Vessel-Based Passive Acoustic Monitoring*

Vessel-based, towed PAM will complement the visual monitoring program, when practicable. PAM can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The PAM will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it does not depend on good visibility. It will be monitored in real time so that the PSVOs can be advised when cetaceans are detected.

One PSAO, an expert bioacoustician (in addition to the four PSVOs) with primary responsibility for PAM, will be onboard the *Langseth*. The towed hydrophones will ideally be monitored by the PSAO 24 hours per day while at the seismic survey area during airgun operations, and during most periods when the *Langseth* is underway while the airguns are not operating. However, PAM may not be possible if damage occurs to the array or back-up systems during operations. The primary PAM streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone. One PSAO will monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The PSAO monitoring the acoustical data will be on shift for one to six hours at a time. All PSOs are expected to rotate through the PAM position, although the expert PSAO (most experienced) will be on PAM duty more frequently.

When a vocalization is detected while visual observations (during daylight) are in progress, the PSAO will contact the PSVO immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), and to allow a power-down or shut-down to be initiated, if required. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the PSVO(s) to help him/her sight the calling animal. During non-daylight hours, when a cetacean is detected by acoustic monitoring and may be close to the source vessel, the *Langseth* crew will be notified immediately so that the proper mitigation measure may be implemented.

The information regarding the call will be entered into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

*Reporting*

*PSO Data and Documentation*

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment. They will also provide information needed to order a power-down or shut-down of the airguns when a marine mammal is within or near the exclusion zone. Observations will also be made during daytime periods when the *Langseth* is underway without seismic operations. There will also be opportunities to collect baseline biological data during the transits to, from, and through the study area.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing

and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations and ramp-ups, power-downs, or shut-downs will be recorded in a standardized format. The PSOs will record this information onto datasheets. During periods between watches and periods when operations are suspended, those data will be entered into a laptop computer running a custom computer database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power-down or shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

L–DEO will submit a comprehensive report to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (i.e., dates, times, locations, activities, associated seismic survey activities, and associated PAM detections). The report will minimally include:

- Summaries of monitoring effort—total hours, total distances, and distribution of marine mammals through the study period accounting for Beaufort sea state and other factors affecting visibility and detectability of marine mammals;
- Analyses of the effects of various factors influencing detectability of marine mammals including Beaufort sea state, number of PSOs, and fog/glare;
- Species composition, occurrence, and distribution of marine mammals sightings including date, water depth, numbers, age/size/gender, and group sizes; and analyses of the effects of seismic operations;
- Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability);
- Initial sighting distances versus airgun activity state;
- Closest point of approach versus airgun activity state;
- Observed behaviors and types of movements versus airgun activity state;
- Numbers of sightings/individuals seen versus airgun activity state; and
- Distribution around the source vessel versus airgun activity state.

The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways. After the report is considered final, it will be publicly available on the NMFS and NSF Web sites at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha* and *http://www.nsf.gov/geo/oce/encomp/index.jsp*.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), the L–DEO shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*. The report must include the following information:

Time, date, and location (latitude/longitude) of the incident;

- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source used in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

L–DEO shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with L–DEO to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The L–DEO may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that L–DEO discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as NMFS describes in the next paragraph), the L–DEO will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the L–DEO to determine whether modifications in the activities are appropriate.

In the event that L–DEO discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the L–DEO would report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office or Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, within 24 hours of the discovery. The L–DEO would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

**Estimated Take by Incidental Harassment**

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine

mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Level B harassment is anticipated and authorized as a result of the marine seismic survey in the northeast Atlantic Ocean. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array are expected to result in the behavioral disturbance of some marine mammals. There is no evidence that the planned activities could result in injury, serious injury, or mortality for which L–DEO seeks the IHA. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The following sections describe L–DEO's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the seismic program in the northeast Atlantic Ocean. The estimates are based on a consideration of the number of marine mammals that could be harassed by seismic operations with the 18 airgun array to be used. The size of the 2D and 3D seismic survey area in 2013 is approximately 5,834 km (3,150.1 nmi), as depicted in Figure 1 of the IHA application.

L–DEO assumes that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the multibeam echosounder and sub-bottom profiler would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the multibeam echosounder and sub-bottom profiler given their characteristics (e.g., narrow, downward-directed beam) and other considerations described previously in the notice of the proposed IHA (78 FR 17359, March 21, 2013). Such reactions are not considered to constitute ''taking'' (NMFS, 2001). Therefore, L–DEO provided no additional allowance for animals that could be affected by sound sources other than airguns.

L–DEO used densities presented in the CODA final report for surveys off northwest Spain in 2007 (Anonymous, 2009; Macleod *et al.,* 2009) to estimate how many animals could be exposed during the survey. The density reported for ''unidentified large whale'' was allocated to the humpback whale because there have been a number of sightings of humpback whales off northwest Spain, although none were sighted in the CODA surveys and most other large whales were. Macleod *et al.* (2008) did not provide densities for beaked whale species, only ''beaked whales,'' therefore the density for beaked whales was allocated to Cuvier's beaked whale, as this was the most numerous species of beaked whale sighted during surveys off northwest Spain (see Basto d'Anstrade, 2008). Also, the CODA report (Anonymous, 2008) discussed two predicted high-density areas for beaked whales, in the most north-westerly section (Sowerby's beaked whale and northern bottlenose whale) and the most south-easterly section, the Gulf of Biscay (Cuvier's beaked whale). Except for beaked whales and bottlenose dolphins, all reported densities were corrected for trackline detection probability ($f$[0]) and availability (g[0]) biases by the authors of the CODA report. L–DEO chose not to correct the other densities, $f$(0) and g(0) are specific to the location and cetacean habitat. Although there is some uncertainty about the representativeness of the data and assumptions used in the calculations below. The CODA surveys were in July, 2007 (versus June to mid-July, 2013 for the seismic survey), and CODA survey block 3, the closest to the planned offshore survey area, includes waters closer to shore and is somewhat farther north (43 to 45° versus 42° North) and extends west to the north of Spain towards the Bay of Biscay. The approach used here is believed to be the best available approach.

The estimated numbers of individuals potentially exposed presented below are based on the 160 dB (rms) criterion currently used to estimate Level B harassment for all cetaceans. It is assumed that marine mammals exposed to airgun sounds at that received level could change their behavior sufficiently to be considered ''harassment.'' Table 3 shows the density estimates calculated as described above and the estimates of the number of different individual marine mammals that potentially could be exposed to greater than or equal to 160 dB (rms) during the seismic survey if no animals moved away from the survey vessel. The requested take authorization is given in the far right column of Table 3. For species for which densities were not calculated as described above, but for which there were Ocean Biogeographic Information System (OBIS) sightings around the Azores, L–DEO has requested take authorization for the mean group size for the species.

It should be noted that the following estimates of exposures to various sound levels assume that the planned survey would be completed; in fact, the esonified areas calculated using the planned number of line-kilometers have been increased by 25% to accommodate turns, lines that may need to be repeated, equipment testing, etc. As typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. Also, any marine mammal sightings within or near the designated exclusion zones would result in shut-down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to 160 dB (rms) sounds are precautionary and probably overestimate the actual numbers of marine mammals that could be involved. These estimates assume that there would be no weather, equipment, or mitigation delays, which is highly unlikely.

The number of different individuals that could be exposed to airgun sounds with received levels greater than or equal to 160 dB (rms) on one or more occasions can be estimated by considering the total marine area that would be within the 160 dB (rms) radius around the operating seismic source on at least one occasion, along with the expected density of animals in the area. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160 dB radius around the operating airguns, including areas of overlap. During the survey, the transect lines are closely spaced relative to the 160 dB distance. Thus, the area including overlap is 8.2 times the area excluding overlap, so a marine mammal that stayed in the survey area during the entire survey could be exposed approximately 8 times, on average. However, it is unlikely that a particular animal would stay in the area during the entire survey. The numbers of different individuals potentially exposed to greater than or equal to 160 dB (rms) were calculated by multiplying the expected species density times the anticipated area to be ensonified to that level during airgun operations excluding overlap. The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by ''drawing'' the applicable 160 dB buffer zone (see Table

2) around each seismic line, and then calculating the total area within the buffer zone.

TABLE 3—ESTIMATED DENSITIES OF MARINE MAMMAL SPECIES AND ESTIMATES OF NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS ≥160 dB DURING L–DEO'S SEISMIC SURVEY IN THE NORTHEAST ATLANTIC OCEAN (IN THE DEEP GALICIA BASIN WEST OF SPAIN), JUNE TO JULY, 2013

| Species | Reported/estimated density (#/km²) | Calculated take authorization [i.e., estimated number of individuals exposed to sound levels ≥ 160 dB re 1 μPa] (includes 25% contingency) | Take authorization with additional 25% (includes increase to mean group size) [2] | Approximate percentage of estimated of regional population (authorized take) [1] |
|---|---|---|---|---|
| **Mysticetes** | | | | |
| North Atlantic right whale | 0 | 0 | 0 | 0 |
| Humpback whale | 0.001 | 8 | 2 | 0.07 (0.02) |
| Minke whale | 0 | 0 | 3 | 0 (<0.01) |
| Sei whale | 0.002 | 16 | 106 | 0.13 (0.9) |
| Fin whale | 0.019 | 153 | 1,002 | 0.62 (4.03) |
| Blue whale | 0 | 0 | 3 | 0 (0.32) |
| **Odontocetes** | | | | |
| Sperm whale | 0.003 | 24 | 159 | 0.18 (1.21) |
| *Kogia* spp. (Pygmy and dwarf sperm whale) | 0 | 0 | 0 | 0 (0) |
| Cuvier's beaked whale | 0.004 | 32 | 32 | 0.46 (0.46) |
| Northern bottlenose whale | 0 | 0 | 4 | 0 (0.01) |
| *Mesoplodon* spp. (i.e., True's, Gervais', Sowerby's, and Blainville's beaked whale | 0 | 0 | 7 | 0 (0.1) |
| Bottlenose dolphin | 0.005 | 40 | 40 | 0.21 (0.21) |
| Atlantic spotted dolphin | 0 | 0 | 0 | 0 (0) |
| Striped dolphin | 0.047 | 378 | 378 | 0.56 (0.56) |
| Short-beaked common dolphin | 0.077 | 620 | 620 | 0.53 (0.53) |
| Risso's dolphin | 0 | 0 | 4 | 0 (0.02) |
| Pygmy killer whale | 0 | 0 | 0 | NA (NA) |
| False killer whale | 0 | 0 | 10 | NA (NA) |
| Killer whale | 0 | 0 | 5 | NA (NA) |
| Short-finned pilot whale | 0 | 0 | 5 | 0 (<0.01) |
| Long-finned pilot whale | 0.001 | 8 | 8 | <0.001 (<0.01) |

NA = Not available or not assessed.
[1] Stock sizes are best populations from NMFS Stock Assessment Reports (see Table 2 in above).
[2] Requested take authorization was increased to mean group size for species for which densities were not available but that have been sighted near the survey area.

Applying the approach described above, approximately 6,437 km² (1,876.7 nmi²) (approximately 8,046 km² [2,345.8 nmi²] including the 25% contingency) would be within the 160 dB isopleth on one or more occasions during the survey. This approach does not allow for turnover in the marine mammal populations in the area during the course of the survey, so the actual number of individuals exposed may be underestimated, although the conservative (i.e., probably overestimated) line-kilometer distances used to calculate the area may offset this. Also, the approach assumes that no cetaceans would move away or toward the trackline as the *Langseth* approaches in response to increasing sound levels before the levels reach 160 dB (rms). Another way of interpreting the estimates that follow is that they represent the number of individuals that are expected (in the absence of a seismic program) to occur in the waters that would be exposed to greater than or equal to 160 dB (rms).

The estimate of the number of individual cetaceans by species that could be exposed to seismic sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) during the survey is (with 25% contingency) as follows: 2 humpback, 106 sei, 1,002 fin, 3 blue, and 159 sperm, which would represent 0.02, 0.9, 4.03, 0.32, and 1.21% of the affected regional populations, respectively. In addition, 43 beaked whales, (including 32 Cuvier's, 4 northern bottlenose, and 7 *Mesoplodon* beaked whales) could be taken by Level B harassment during the seismic survey, which would represent 0.46, 0.01, and 0.1% of the regional populations. Most of the cetaceans potentially taken by Level B harassment are delphinids; bottlenose, striped, and short-beaked common, dolphins, are estimated to be the most common delphinid species in the area, with estimates of 40, 378, and 620, which would represent 0.21, 0.56, and 0.53% of the regional populations, respectively.

**Encouraging and Coordinating Research**

L–DEO and NSF will coordinate the planned marine mammal monitoring program associated with the seismic survey with other parties that may have interest in this area. L–DEO and NSF will coordinate with applicable U.S. agencies (e.g., NMFS), and will comply with their requirements.

**Negligible Impact and Small Numbers Analyses and Determinations**

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably

expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures (i.e., the manner and degree in which the measure is likely to reduce adverse impacts to marine mammals, the likely effectiveness of the measures, and the practicability of implementation).

For reasons stated previously in the document, in the notice of the proposed IHA (78 FR 17359, March 21, 2013) and based on the following factors, the specified activities associated with the marine seismic survey are not likely to cause PTS, or other non-auditory injury, serious injury, or death. The factors include:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The potential for temporary or permanent hearing impairment is relatively low and would likely be avoided through the implementation of the power-down and shut-down measures; and

(3) The likelihood that marine mammal detection ability by trained PSOs is high at close proximity to the vessel.

No injuries, serious injuries, or mortalities are anticipated to occur as a result of L–DEO's planned marine seismic survey, and none are authorized by NMFS. Table 3 of this document outlines the number of authorized Level B harassment takes that are anticipated as a result of these activities. Further, the seismic surveys will not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and will not adversely impact marine mammal habitat.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While seismic operations are anticipated to occur on consecutive days, the estimated duration of the survey would last no more than 39 days. Additionally, the seismic survey will be increasing sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for less than a day.

As mentioned previously, NMFS estimates that 20 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 3 of this document.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, the impact of conducting a marine seismic survey in the northeast Atlantic Ocean, June to July, 2013, may result, at worst, in a modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas for species and the short and sporadic duration of the research activities, have led NMFS to determine that the taking by Level B harassment from the specified activity will have a negligible impact on the affected species in the specified geographic region. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section above) in this notice, the activity is not expected to impact rates of annual recruitment or survival for any affected species or stock, particularly given the NMFS and the applicant's proposal to implement a mitigation and monitoring plans to minimize impacts to marine mammals.

The requested take estimates represent small numbers relative to the affected species or stock sizes (i.e., all are less than or equal to 4%). See Table 3 for the authorized take number of marine mammals.

**Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

Section 101(a)(5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (in the northeast Atlantic Ocean) that implicate MMPA section 101(a)(5)(D).

**Endangered Species Act**

Of the species of marine mammals that may occur in the survey area, several are listed as endangered under the ESA, including the North Atlantic right, humpback, sei, fin, blue, and sperm whales. L–DEO did not request take of endangered North Atlantic right whales due to the low likelihood of encountering this species during the cruise. Under section 7 of the ESA, NSF has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this seismic survey. NMFS's Office of Protected Resources, Permits and Conservation Division, has initiated and engaged in formal consultation under section 7 of the ESA with NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. These two consultations were consolidated and addressed in a single Biological Opinion addressing the direct and indirect effects of these independent actions. In May 2013, NMFS issued a Biological Opinion and concluded that the action is not likely to jeopardize the existence of cetaceans and sea turtles and included an Incidental Take Statement (ITS) incorporating the requirements of the IHA as Terms and Conditions of the ITS is likewise a mandatory requirement of the IHA. The Biological Opinion also concluded that designated critical habitat of these species does not occur in the action area and would not be affected by the survey.

**National Environmental Policy Act**

With L–DEO's complete application, NSF and L–DEO provided NMFS an ''Environmental Analysis of a Marine Geophysical Survey by the R/V *Marcus*

*G. Langseth* in the Northeast Atlantic Ocean, June-July 2013,'' prepared by LGL Ltd., Environmental Research Associates, on behalf of NSF and L–DEO. The EA analyzes the direct, indirect, and cumulative environmental impacts of the planned specified activities on marine mammals including those listed as threatened or endangered under the ESA. NMFS, after review and evaluation of the NSF EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, prepared an independent EA titled ''Environmental Assessment on the Issuance of an Incidental Harassment Authorization to the Lamont-Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the Northeast Atlantic Ocean, June to July 2013.'' After considering the EA, the information in the IHA application, Biological Opinion, and the **Federal Register** notice, as well as public comments, NMFS has determined that the issuance of the IHA is not likely to result in significant impacts on the human environment and has prepared a Finding of No Significant Impact (FONSI). An Environmental Impact Statement is not required and will not be prepared for the action.

**Authorization**

NMFS has issued an IHA to L–DEO for the take, by Level B harassment, of small numbers of marine mammals incidental to conducting a marine seismic survey in the northeast Atlantic Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 3, 2013.

**Helen M. Golde,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–13388 Filed 6–5–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to receive briefings and updates relating to the Committee's current work. The Committee will receive briefings on the Marine Corps Infantry Officer Course, commissioning sources related to representation of women, and an update on the Women in Services Review. The Committee will receive a briefing summarizing their installation visits. Additionally, the Committee will receive an update from the Sexual Assault and Response Office, a briefing on the Military Justice System, and a briefing on the 2011 Health Related Behavior Survey results. Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to the availability of space.

**DATES:** Thursday, June 20, 2013, from 8:30 a.m. to 3:00 p.m.; Friday, June 21, 2013, from 8:30 a.m. to 2:45 p.m.

**ADDRESSES:** Sheraton National Hotel-Pentagon City, 900 South Orme St., Arlington, VA 22204.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Bowling or DACOWITS Staff at 4000 Defense Pentagon, Room 5A734, Washington, DC 20301–4000. *Robert.bowling@osd.mil.* Telephone (703) 697–2122. Fax (703) 614–6233.

**SUPPLEMENTARY INFORMATION:** Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, interested persons may submit a written statement for consideration by the Defense Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact listed at the address in **FOR FURTHER INFORMATION CONTACT** no later than 5:00 p.m., Tuesday, June 18, 2013. If a written statement is not received by Tuesday, June 18, 2013, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement should be submitted. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Pursuant to 41 CFR 102–3.140(d), determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Friday, June 21, 2013 from 2:00 p.m. to 2:30 p.m. in front of the full Committee. The number of oral presentations to be made will depend on the number of requests received from members of the public.

Meeting agenda:

**Thursday, June 20, 2013, 8:30 a.m.–3:00 p.m.**

—Welcome, Introductions, Announcements
—Briefing—Request for Information Update
—Briefing—Marine Corps Infantry Officer Course
—Briefing—Commissioning Sources
—Briefing—Women in Services Review Update
—Briefing—Summary of Installation Visits

**Friday, June 21, 2013, 8:30 a.m.–2:45 p.m.**

—Announcements
—Briefing—Sexual Assault Prevention and Response Office Update
—Briefing—Military Justice System
—Briefing—2011 Health Related Behaviors Survey Results
—Public Comment Period

Dated: June 3, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2013–13407 Filed 6–5–13; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Proposed Reductions in Levels of Service at Locks and Dams on the J Bennett Johnston Waterway (Red River)

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** It is proposed that the hours of availability at Lindy C. Boggs and John H. Overton Locks on the J Bennett Johnston Waterway (Red River) will remain at the current schedule of 24 hours per day, 7 days per week, 365 days per year. It is also proposed that the hours of availability at Lock 3, Russell B. Long, and Joe D. Waggonner locks will be reduced from the current schedule of 24 hours per day, 7 days per week, 365 days per year, to 20 hours per day, as operated by the contractor, 7 days per week, 365 days per year. The Inland Marine Transportation System Level of Service Guidelines led to the reduced hours of operation for Lock 3, Russell B. Long, and Joe D. Waggonner locks. The intended effect is to provide lock availability that matches existing lock usage. Pool levels will not be affected by change of operating hours.

**DATES:** Proposed implementation date is February 1, 2014.

**ADDRESSES:** Submit written comments to Mr. James V. Ross, Chief, Operations Division, Vicksburg District, U.S. Army Corps of Engineers, 4155 Clay Street, Vicksburg, MS 39183, or deliver them to Mr. Ross between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday at the address above. Comments received and other materials relevant to the proposed reduction in hours of lock availability will be posted on the Vicksburg District Web site, *http://www.mvk.usace.army.mil/*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Kidby at the Corps of Engineers Headquarters in Washington, DC, by phone at 202–761–0250.

**SUPPLEMENTARY INFORMATION:** The legal authority for the regulation governing the use, administration, and navigation of the Red River and Locks is Section 4 of the River and Harbor Act of August 18, 1894 (28 Stat. 362), as amended, which is codified at 33 U.S.C. 1. This statute requires the Secretary of the Army to ''prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States'' as the Secretary determines may be required by public necessity. Reference 33 CFR 207.249, Ouachita and Black Rivers, Ark. and La., Mile 0.0 to Mile 338.0 (Camden, Ark.) above the mouth of the Black River; the Red River, La., Mile 6.7 (Junction of Red, Atchafalaya and Old Rivers) to Mile 276.0 (Shreveport, La.); use, administration, and navigation.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2013–13379 Filed 6–5–13; 8:45 a.m.]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF ENERGY

**[FE Docket No. 13–26–LNG]**

## Freeport-McMoRan Energy LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 30-Year Period

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application) filed on February 22, 2013, by Freeport-McMoRan Energy LLC (FME), requesting long-term, multi-contract authorization to export liquefied natural gas (LNG) produced from domestic sources in an amount up to 24 million metric tons per year (mtpa), which FME states is equivalent to approximately 1,176 billion cubic feet per year (Bcf/y) of natural gas, or 3.2 Bcf per day (Bcf/d).[1] FME seeks authorization to export the LNG for a 30-year term from the proposed Main Pass Energy Hub™ Deepwater Port (MPEH™ Port), to be located in federal waters in Main Pass Block 299, 16 miles offshore of Louisiana. In the portion of FME's Application subject to this Notice, FME requests authorization to export LNG to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas (non-FTA countries) with which trade is not prohibited by U.S. law or policy. FME requests that this authorization commence on the earlier of the date of first export or 10 years from the date the authorization is granted. FME requests this authorization both on its behalf and as agent for other parties who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717b.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, August 5, 2013.

**ADDRESSES:** *Electronic Filing by email: fergas@hq.doe.gov*.

**Regular Mail**

U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

**Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)**

U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Larine Moore or Marc Talbert, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7991.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397.

**SUPPLEMENTARY INFORMATION:**

### Background

FME, a subsidiary of McMoRan Exploration Co., is a Delaware limited liability company with its principal place of business in New Orleans, Louisiana. FME is also an initial member of Main Pass Energy Hub LLC (MPEH LLC), which is a Delaware limited liability company with its principal place of business in New Orleans, Louisiana. The other initial member of MPEH LLC is United LNG, LLC, a Delaware limited liability company.

FME is requesting this authorization to export LNG from the MPEH™ Port, currently owned by FME. FME and United LNG, LP are parties to a Memorandum of Understanding (MOU) concerning the commercial development of the MPEH™ Port. United LNG, LP is a Texas limited partnership with its principal place of business in Houston, Texas. After execution of the MOU, MPEH LLC was formed.

FME states that the MPEH™ Port is proposed to be located in approximately 210 feet of water at a deepwater site in

[1] Applicants are required to provide volumes of natural gas in Bcf, 10 CFR 590.202(b)(1), and therefore DOE/FE will address FME's requested authorization in Bcf/y below.

the Gulf of Mexico on the Outer Continental Shelf (OCS) of the United States, approximately 16 miles offshore from southeast Louisiana at Main Pass Block 299 (Block 299).[2] FME states that the MPEH™ Port will be configured to receive, store, condition, and liquefy domestic natural gas for export as LNG. Construction of the MPEH™ Port will include modification of existing offshore structures currently owned by FME; construction of new facilities and salt dome storage caverns; and construction, installation, and operation of floating liquefaction storage and offloading vessels (FLVs) to be used for the on-site liquefaction and exportation of LNG from the MPEH™ Port.

According to FME, the MPEH™ Port will utilize five large existing interconnected platforms and three smaller satellite platforms. FME states that these platforms will house the gas conditioning facilities, gas metering facilities, quarters for on-site employees, and gas storage and compression equipment. FME further states that, in addition to the platform-based facilities, the MPEH™ Port will consist of six FLVs, each capable of producing up to 4 mtpa of LNG, for a total production capacity at the MPEH™ Port of 24 mtpa of LNG. FME states that each FLV will be moored using a buoy system and will be capable of liquefying 537 million cubic feet per day of natural gas, storing 200,000 cubic meters of LNG, and delivering LNG to off-taking LNG carriers utilizing a ship-to-ship process.

According to FME, the amount of LNG sought to be exported from the MPEH™ Port in the current Application is the same amount for which FME's affiliate MPEH LLC obtained an export authorization in January 2013, in DOE/FE Docket No. 12–114–LNG. Specifically, in DOE/FE Order No. 3220, DOE/FE authorized MPEH LLC to export from the MPEH™ Port up to 1,175 Bcf/y of natural gas (which MPEH LLC stated was the equivalent of the requested 24 mtpa of LNG) to any country with which the United States currently has, or in the future will have, a FTA requiring the national treatment for trade in natural gas, pursuant to section 3(c) of the Natural Gas Act (NGA), 15 U.S.C. 717b(c).[3] In the current Application, FME requests both FTA and non-FTA authorizations for the same quantity of LNG, stating that only 24 mtpa of LNG will be exported in any year from the proposed MPEH™ Port (which DOE/FE notes is equivalent to 1,175 Bcf/y of natural gas).

Subsequently, in DOE/FE Order No. 3290, DOE granted the portion of FME's Application seeking FTA export authorization.[4] In that order issued on May 24, 2013, DOE/FE authorized FME to export domestically produced LNG by vessel to FTA nations from the proposed MPEH™ Port up to the equivalent of 1,175 Bcf/y of natural gas for a 30-year term.[5] DOE/FE explained that, although FME's Application states that 24 mtpa is ''approximately equivalent to 1,176 Bcf . . . per year,'' [6] DOE/FE granted FME's FTA authorization in an amount equivalent to 1,175 Bcf/y of natural gas to retain consistency with the FTA authorization granted to MPEH LLC in DOE/FE Order No. 3220.

FME asserts that any export authorizations issued to MPEH LLC and FME are meant to be coincidental rather than cumulative, and that, before any exports occur, it will inform DOE/FE as to how the 24 mtpa of LNG exports will be allocated between all export authorizations applicable to the MPEH™ Port.

**Current Application**

FME requests authorization to export domestically produced LNG in an amount up to of 24 mtpa, which it states is the equivalent of 1,176 Bcf/y of natural gas (equal to 3.22 Bcf/day of natural gas), from the proposed MPEH™ Port to be located 16 miles offshore of Louisiana to: (1) Any country with which the United States currently has, or in the future will have, a Free Trade Agreement (FTA) requiring the national treatment for trade in natural gas, and (2) as relevant here, any country with which the United States does not have an FTA requiring national treatment for trade in natural gas (non-FTA countries) with which trade is not prohibited by U.S. law or policy.

FME seeks authorization to export the LNG for a 30-year term, commencing on the earlier of the date of first export or 10 years from the date the authorization is issued. FME requests this authorization both on its behalf and as agent for other parties who hold title to the LNG at the time of export. FME states that it will comply with all DOE/FE requirements for exports and agents, as established in *Freeport LNG Development, L.P. and FLNG Liquefaction, LLC,* DOE/FE Order No. 2913, including the registration requirements.[7] FME further states that, when acting as agent, it will register with DOE/FE each LNG title holder for which FME seeks to export LNG as agent.

The portion of FME's Application that seeks authorization to export domestically produced LNG to non-FTA countries will be reviewed pursuant to NGA section 3(a), 15 U.S.C. 717b(a), and is the subject of this Notice. As stated above, DOE/FE already granted the portion of FME's Application that sought authorization to export the same quantity of domestically produced LNG to FTA countries pursuant to NGA section 3(c).

FME states that the MPEH™ Port will export natural gas available in the U.S. natural gas supply and transmission system. FME states that the sources of natural gas will include the vast supplies of natural gas available from the Gulf Coast producing regions, including onshore and offshore resources. FME further states that the proposed MPEH™ Port has the potential to access nine major natural gas pipelines, with indirect access to the entire national gas pipeline grid. The MPEH™ Port will draw gas from the domestic market through a pipeline connecting the offshore facilities to the onshore interstate pipeline network and from off-shore gathering and transmission systems in the Gulf of Mexico. FME asserts that it holds a sulphur and salt lease in Block 299, which it will use to construct salt-dome storage caverns to store natural gas prior to liquefaction. FME states that the natural gas intake at the MPEH™ Port will not exceed 4 Bcf/d.

FME states that the MPEH™ Port will be strategically located on the OCS, which it characterizes as a prolific and highly productive area. According to

[2] According to FME, this site is located at latitude 29°15′56″ and longitude 88°45′34″.

[3] *Main Pass Energy Hub, LLC,* DOE/FE Order No. 3220, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the MPEH Deepwater Port Located 16 miles Offshore the Louisiana Coast in Federal Waters to Free Trade Agreement Nations (Jan. 4, 2013). In the Main Pass application, MPEH LLC stated that 24 mtpa was equal to 1,175 Bcf/y of natural gas and, on that basis, DOE/FE granted export authorization to MPEH LLC in that amount. *See Main Pass Energy Hub, LLC,* DOE/FE Order No. 3220, at 9 (''Main Pass is authorized to export domestically produced LNG by vessel from the proposed MPEH Deepwater Port . . . up to the equivalent of 1,175 Bcf/y of natural gas for a 30-year term, . . . .'').

[4] *Freeport-McMoRan Energy LLC,* DOE/FE Order No. 3290, Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas By Vessel from the Proposed Main Pass Energy Hub™ Deepwater Port 16 Miles Offshore Of Louisiana to Free Trade Agreement Nations (May 24, 2013).

[5] *Id.* at 10. The authority to regulate the import and export of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. 717b) was delegated to the Assistant Secretary for FE in Redelegation Order No. 00–002.04E, issued on April 29, 2011.

[6] FME App. at 1.

[7] *Freeport LNG Development, L.P. and FLNG Liquefaction, LLC,* DOE/FE Order No. 2913, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations (Feb. 10, 2011).

FME, its parent company (MMR Exploration Co.) is one of the largest acreage holders on the OCS and is engaged in exploration and development activities with the potential to unlock more than 100 trillion cubic feet of natural gas over a 200-mile area in the shallow waters of the Gulf of Mexico and onshore Louisiana.[8] FME contends that the onshore and offshore resources available to the MPEH™ Port through its numerous potential pipeline interconnections will provide more than sufficient gas quantities to support the proposed LNG exports over the term of the requested authorization. FME further notes that, given the size of traditional gas resources in close proximity to the proposed MPEH™ Port, as well as rapid growth of gas resources in the region, FME's customers will have a diverse, reliable choice of gas supplies from the most liquid natural gas market in the world.

FME asserts that the long-term authorization requested in this Application is necessary to permit it to incur the substantial capital and other costs of developing the MPEH™ Port and to secure customer contracts. FME states that terms for the use of the liquefaction and other offshore deepwater port facilities will be set forth in agreements with customers of the MPEH™ Port.

As explained below, FME states that this Application will include a complete environmental review of the proposed MPEH™ Port. The U.S. Maritime Administration (MARAD), in coordination with the U.S. Coast Guard, will act as the lead agency for environmental review of the proposed MPEH™ Port, with DOE acting as a cooperating agency. FME asks that DOE/FE issue the export authorization conditioned on MARAD's completion of the environmental review and approval of the facility construction.

Finally, FME asks that DOE/FE consider the Application separately from the processing parameters established for non-FTA applications before the Deepwater Port Act of 1974 was amended in December 20, 2012.[9] FME states that it had been in discussions with MARAD about the proposed MPEH™ Port project since July 2012, and submitted to MARAD a Letter of Intent to Submit Application on October 3, 2012. According to FME, MARAD's jurisdiction to license an LNG export facility under the Deepwater Port Act was not clear before that Act was amended on December 20, 2012. FME further states that, following discussions with DOE/FE, FME was unable to submit a non-FTA application until the amendments were enacted. Therefore, FME contends that it should not be subject to the previously established processing parameters.

**Public Interest Considerations**

FME states that its proposed non-FTA authorization should be granted by DOE/FE because it is not inconsistent with the public interest, as set forth in NGA section 3(a). FME quotes DOE/FE in stating that, '' 'Section 3(a) of the NGA creates a rebuttable presumption that proposed exports of natural gas are in the public interest, and [that] DOE must grant such an application unless those who oppose the application overcome that presumption.' '' [10] FME states that DOE/FE, in evaluating the public interest pursuant to its Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas, examines whether '''domestic supply shortages or domestic security needs overcome the statutory presumption that a proposed export is not inconsistent with the public interest.' '' [11] FME states that, although the Policy Guidelines address imports of natural gas, DOE/FE has found that the same principles apply to exports.[12]

FME asserts that the main focus of DOE/FE's public interest analysis has been the projected domestic need for the gas to be exported. FME states that, during the period of the export authorization requested by FME, U.S. reserves and recoverable resources will be far in excess of total gas demand. FME further asserts that multiple, independent analyses, including that of Navigant Consulting, Inc. and Deloitte MarketPoint, have concluded that exports will not cause a significant increase in domestic natural gas prices. Therefore, FME maintains that its requested export authorization will not have a detrimental impact on the domestic supply of natural gas and is not inconsistent with the public interest.

Addressing domestic natural gas supply, FME contends that the U.S. natural gas supply is more than adequate to meet both the future U.S. domestic demand and FME's proposed export volumes over the term of the requested authorization. FME discusses the impact of increased shale production on domestic supply, stating that dry gas production in 2013 is expected to be 24 Trillion Cubic Feet (Tcf), a 13 percent increase from 2010.[13]

Addressing domestic natural gas demand, FME states that U.S. natural gas available for supply far exceeds demand. According to FME, EIA estimates that domestic natural gas demand will grow from 25.63 Tcf per year in 2012 to 28.71 Tcf per year in 2035, and that cumulative domestic gas consumption from 2012 through 2035 will be 643 Tcf.[14]

FME states that its requested export authorization would increase demand by a maximum of 1.46 Tcf per year. FME recognizes that other applications to export domestic LNG are pending before DOE and additional applicants may seek export authorization. As noted above, FME also observes that a number of groups—including Navigant, Deloitte, and the Brookings Energy Security Initiative—have considered the cumulative effects of LNG exports on natural gas demand and pricing.

Focusing on the Navigant study, FME states that Navigant considered two scenarios of relevance to FME's Application: an ''Aggregate Exports Case'' and a ''High Demand Base Case.'' The Aggregate Exports Case assumes a total of 7.7 Bcf per day of LNG exports, split between Gulf Coast exports (4.7 Bcf/day), Pacific Coast exports (2.5 Bcf/day), and Atlantic Coast (0.5 Bcf/day)—an assumption that could reflect the proposed MPEH™ Port operating at full capacity. The High Demand Base Case assumes a total of 7.2 Bcf/day of LNG exports (excluding the Atlantic Coast exports), but includes increased domestic demand for natural gas, such as through natural gas vehicles.[15] FME

[8] FME notes that exports of natural gas directly from the OCS may be subject to the requirements of the Outercontinental Shelf Lands Act, 43 U.S.C. 1354(b), and states that FME would conduct any such activities in compliance with those requirements.

[9] The Deepwater Port Act of 1974, 33 U.S.C. 1501 *et seq.,* was amended in December 2012 to allow exports of oil and gas to occur from offshore facilities in waters of the United States.

[10] FME App. at 8 (quoting *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 2961, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations (May 20, 2011), at 28).

[11] *Id.* at 9 (quoting *Sabine Pass Liquefaction, LLC,* FE Docket 10–111–LNG, Opinion and Order Denying Request for Review Under Section 3(c) of the NGA, at 5 (Oct. 21, 2010) & Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas, 49 FR 6,684 (Feb.22, 1984).

[12] *Id.* (citing, *e.g., Phillips Alaska Natural Gas Corp. and Marathon Oil Co.,* DOE/FE Order No. 1473 at 14).

[13] U.S. Energy Information Administration, *Annual Energy Outlook 2013 Early Release* (Jan. 2013), *available at http://www.eia.doe.gov/forecasts/aeo/tables.ref.cfm* (EIA Outlook 2013 Early Release).

[14] EIA Outlook 2013 Early Release.

[15] Navigant Consulting, Inc., *Southern LNG Export Project Market Analysis Study,* included as App. A to the *Application of Southern LNG Company, L.L.C. for Long-Term, Multi-Contract*

notes Navigant's conclusion that LNG exports would have a mild stimulating effect on U.S. natural gas production. Under the Aggregate Exports Case and High Demand Base Case, FME states that U.S. gas supply would increase slightly more than would be expected without exports.

FME states that Deloitte also prepared a study that considered a number of export scenarios, including exports of 1.33 Bcf/day, 3 Bcf/day, 6 Bcf/day, 9 Bcf/day, and 12 Bcf/day.[16] FME asserts that the analyses from Navigant and Deloitte are applicable to the proposed MPEH™ Port because the Port will be located near traditional and shale reserves in the Gulf of Mexico in a location where other projects are being considered.

Taking into account these studies and EIA data, FME maintains that: (1) The United States has more than enough supply to support domestic gas needs and proposed LNG export volumes, and (2) natural gas producers will be able to anticipate new demand and ramp up production in advance, such that the commencement of LNG exports will not shock the market.

Turning to potential impacts on U.S. natural gas market prices, FME contends that the effect of LNG exports on natural gas prices will be limited. As support for this position, FME cites analyses performed by EIA, Navigant, and Deloitte. FME concludes that potential increases in natural gas prices resulting from LNG exports are not large enough, and are sufficiently offset by several resulting benefits (such as limiting volatility in the market), so as not to merit a determination that the MPEH™ Port is not in the public interest.

FME next asserts that the requested authorization will benefit local, regional, and national economies and is therefore in the public interest. FME quotes the LNG export study conducted by NERA, which concluded that '' 'the U.S. would experience net economic benefits from increased LNG exports' '' and that '' 'U.S. economic welfare consistently increases as the volume of natural gas exports increased.' '' [17]

Among other economic benefits, FME states that the requested authorization would result in the creation of new jobs and would be consistent with President Obama's National Export Initiative signed in 2010.[18] FME states that, during the five-year build phase, it is estimated that the proposed MPEH™ Port will create about 3,000 to 4,000 jobs. Upon full operation, the Port will employ approximately 250 to 500 people on-site. According to FME, a corollary to the creation of these jobs will be the additional taxes paid by the MPEH™ Port and associated workforce.

FME further states that granting the authorization would positively impact the U.S. balance of trade. FME asserts that, in 2011, the U.S. trade deficit was $559.9 billion—an increase of $65.1 billion from the 2010 figure.[19] FME states that, depending on the price of gas, exports from the MPEH™ Port could reduce the trade imbalance by approximately $12 billion per year. FME observes that DOE/FE, in approving export applications, has acknowledged the positive impact that LNG exports can have on the balance of trade with destination countries.[20]

Additionally, FME explains that, in processing natural gas in preparation for exports, it will derive ethane, propane, and other liquids condensate for sale, which will further help the U.S. balance of trade by increasing domestic supply and thus reducing imports. FME states that, in DOE/FE Order No. 2961, DOE/FE found that a facility exporting 803 Bcf of gas per year would produce 46.7 million barrels per year of liquids and improve the trade balance by $1.7 billion annually.[21] FME states that the MPEH™ Port, by analogy, should produce 68.3 million barrels of liquids and improve the balance of trade by approximately $2.5 billion annually by offsetting imports. FME states that these domestically produced natural gas liquids will be of particular benefit to chemical manufacturers that use these liquids as chemical feedstocks.[22]

Additionally, FME asserts that the requested authorization is consistent with U.S. obligations under the General Agreement on Tariffs and Trade (GATT), would promote free and open trade, and could have wider geopolitical benefits.

Finally, in addition to providing economic benefits, FME states that LNG exports can have significant environmental benefits. FME contends that natural gas is cleaner burning than other fossil fuels, such as coal-fired generation.

Additional details can be found in FME's Application, which is posted on the DOE/FE Web site at: *http://www.fossil.energy.gov/programs/gasregulation/authorizations/2013_applications/13_26_lng_fta.pdf.*

**Environmental Impact**

According to FME, MARAD previously approved an earlier form of the MPEH™ Port as a deepwater port for the importation and regasification of LNG, the conditioning of natural gas to produce natural gas liquids, and the storage of natural gas in salt caverns. FME states that, as part of MARAD's approval process, the MPEH™ LNG import project underwent an extensive analysis under the National Environmental Policy Act (NEPA), 42 U.S.C. 431 *et seq.,* including preparation of an Environmental Impact Statement and a review by several other federal agencies including the U.S. Coast Guard, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, among others. FME states that this analysis resulted in a favorable Record of Decision by MARAD in January 2007.[23]

In connection with this Application, FME states that MARAD, in coordination with the U.S. Coast Guard, will act as the lead agency for environmental review, with DOE acting as a cooperating agency. FME asserts that it initiated discussions with MARAD in October 2012 about developing an application for the proposed MPEH™ Port. FME states that it is currently performing scoping studies to determine which federal, state, or local agencies need to be involved and the additional studies that need to be performed in conjunction with the construction of the proposed MPEH™ Port, including the FLVs. FME requests that DOE/FE issue this export authorization conditioned on MARAD's completion of the NEPA review and approval of the facility construction. FME states that the DOE/FE routinely issues orders with such a condition.[24]

*Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries* submitted in FE Docket No. 12–100–LNG on August 31, 2012 (Navigant Study), at 40.

[16] Deloitte MarketPoint, *Analysis of Economic Impact of LNG Exports from the United States,* included as App. F to the *Application for Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Countries* submitted by Excelerate Liquefaction Solutions I, LLC in FE Docket No. 12–146–LNG on October 5, 2012 (Deloitte Study).

[17] FME App. at 20 (quoting NERA study at 6).

[18] Exec. Order No. 13534, 75 FR 12,433 (Mar. 11, 2010).

[19] Bureau of Economic Analysis, U.S. Department of Commerce, *U.S. International Trade in Goods and Services,* (Oct. 11, 2012), available at *http://www.bea.gov/newsreleases/international/trade/trad_time_series.xls.*

[20] FME App. at 23 n.68 (citing DOE/FE orders).

[21] *Sabine Pass Liquefaction,* LLC, DOE/FE Order No. 2961, at 35.

[22] FME App. at 23 (citing Michael Levi, A Strategy for U.S. Natural Gas Exports, prepared for The Hamilton Project, at 25 (June 2012), *available at http://www.brookings.edu/research/papers/2012/06/13-exports-levi* (Hamilton Study)).

[23] FME App. at 3 n.1 (citing Docket entry 371. USCG–2004–17696–371.).

[24] FME App. at 26 n.80 (citing DOE/FE orders).

**DOE/FE Evaluation**

The Application will be reviewed pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a), and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should address these issues in their comments and/or protests, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Due to the complexity of the issues raised by the Applicant, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

**Public Comment Procedures**

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR Part 590.

Filings may be submitted using one of the following methods: (1) emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 13–26–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 13–26–LNG.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision, and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html*.

Issued in Washington, DC, on May 31, 2013.

**John A. Anderson,**

*Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.*

[FR Doc. 2013–13418 Filed 6–5–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Biological and Environmental Research Advisory Committee

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, June 27, 2013; 8:30 a.m. to 5:00 p.m. Friday, June 28, 2013; 8:30 a.m. to 12:00 p.m.

**ADDRESSES:** Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Thomassen, Designated Federal Officer, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585–1290. Phone 301–903–9817; fax (301) 903–5051 or email: *david.thomassen@science.doe.gov*. The most current information concerning this meeting can be found on the Web site: *http://science.energy.gov/ber/berac/meetings/*.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

**Tentative Agenda Topics**

- Report from the Office of Biological and Environmental Research
- News from the Biological Systems Science and Climate and Environmental Sciences Divisions
- Discussion of the Office of Science Digital Data Policy

- Update on the Atmospheric Radiation Measurement Climate Research Facility
- Science talk
- New Business
- Public Comment

*Public Participation:* The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 45 days at the BERAC Web site: *http://science.energy.gov/ber/berac/meetings/berac-minutes/.*

Issued at Washington, DC, on May 31, 2013.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2013–13420 Filed 6–5–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Revision of a Currently Approved Information Collection for the Energy Efficiency and Conservation Block Grant Program Status Report

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Energy (DOE) invites public comment on a revision of a currently approved collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the revision of the currently approved collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the reduced burden pertaining to the approved collection of information, including the validity of the methodology and assumptions used; (c) ways to further enhance the quality, utility, and clarity of the information being collected; and (d) ways to further minimize the burden regarding the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments regarding this revision to an approved information collection must be received on or before August 5, 2013. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

**ADDRESSES:** Written comments may be sent to Christine Platt Patrick, EE–2K, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, Email: *Christine.Platt@ee.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to: Pam Bloch Mendelson, EE–2K, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–1290, Phone: (202) 287–1857, Fax: (202) 287–1745, Email: *Pam.Mendelson@ee.doe.gov.*

Additional information and reporting guidance concerning the Energy Efficiency and Conservation Block Grant (EECBG) Program is available for review at the following Web sites: *http://www1.eere.energy.gov/wip/recovery_act_guidance.html* and *http://www1.eere.energy.gov/wip/guidance.html.*

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) OMB No. 1910–5150; (2) *Information Collection Request Title:* ''Energy Efficiency and Conservation Block Grant (EECBG) Program Status Report''; (3) *Type of Review:* Revision of currently approved collection; (4) *Purpose:* To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously (especially important for Recovery Act funds); (5) *Annual Estimated Number of Respondents:* 2,404; (6) *Annual Estimated Hourly Burden Number:* 141,066; (7) *Annual Estimated Cost Burden:* $4,796,152; and (8) *Annual Estimated Federal Reporting and Recordkeeping Cost Burden:* $222,480.

**Statutory Authority:** Title V, Subtitle E of the Energy Independence and Security Act (EISA), Pub. L. 110–140 as amended (42 U.S.C. 17151 et seq.), authorizes DOE to administer the EECBG program. All grant awards made under this program shall comply with applicable law including the Recovery Act (Pub. L. 111–5) and other authorities applicable to this program.

Issued in Washington, DC, June 1, 2013.

**AnnaMaria Garcia,**

*Program Manager, Office of Weatherization and Intergovernmental Programs, Office of Energy Efficiency and Renewable Energy.*

[FR Doc. 2013–13419 Filed 6–5–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP13–483–000; PF12–7–000]**

### Jordan Cove Energy Project, L.P.; Notice of Application

Take notice that on May 21, 2013, Jordan Cove Energy Project, L.P. (Jordan Cove), 125 Central Avenue, Suite 380, Coos Bay, Oregon 97420, filed in Docket No. CP13–483–000 an application under section 3 of the Natural Gas Act (NGA) and Parts 153 and 380 of the Commission's regulations, seeking authorization to site, construct and operate a natural gas liquefaction and liquefied natural gas (LNG) export facility (Liquefaction Project) on the bay side of the North Spit of Coos Bay in unincorporated Coos County, Oregon, to the north of the Cities of North Bend and Coos Bay. The LNG Terminal will be capable of receiving natural gas via the Pacific Connector Gas Pipeline (Pacific Connector, applying separately for authorization under NGA section 7), liquefying it, storing it in its liquefied state in two cryogenic storage tanks, and loading the LNG onto ocean going vessels, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Questions regarding this application should be directed to Beth L. Webb, Dickstein Shapiro LLP, 1825 Eye Street NW., Washington, DC 20006, or by telephone at 202–420–2200, or email at *webbb@dicksteinshapiro.com.*

On March 6, 2012, the Commission staff granted Jordan Cove's request to utilize the Pre-Filing Process and assigned Docket No. PF12–7 to staff activities involved with Jordan Cove's Liquefaction Project. Now, as of the filing of the application on May 21, 2013, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP13–483–000, as noted in the caption of this Notice.

Because the environmental review of the Jordan Cove Energy Project must also include the Pacific Connector Gas Pipeline LP (Pacific Connector), as the connecting supply pipeline to the LNG terminal, the Commission cannot begin preparation of the Environmental Impact Statement (EIS) to comply with the National Environmental Policy Act of 1969, until Pacific Connector's application is filed. Within 90 days after the Commission issues a Notice of Application for the Pacific Connector application, the Commission staff will issue a Notice of Schedule for Environmental Review that will indicate the anticipated date for the Commission's staff issuance of the final EIS analyzing both proposals. The issuance of a Notice of Schedule for Environmental Review will also serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's final EIS.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

*Comment Date:* 5:00 p.m. Eastern Time on June 20, 2013.

Dated: May 30, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–13398 Filed 6–5–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 5379–008]**

### New Hampshire Water Resources Board, Hydro Dynamics Corporation; Notice of Transfer of Exemption

1. By letter filed April 16, 2013, New Hampshire Water Resources Board co-exemptee and the New Hampshire Department of Environmental Services, as successor agency, and Hydro Dynamics Corporation as co-exemptee, Goffstown Hydro Corporation, successor in interest informed the Commission that the exemption from licensing for the Hadley Falls Project, FERC No. 5379, originally issued January 19, 1982,[1] has been transferred to the New Hampshire Department of Environmental Service, as sole exemptee. The project is located on the Piscataquog River in Hillsborough County, New Hampshire. The transfer of an exemption does not require Commission approval.

2. New Hampshire Department of Environmental Services, located at 29 Hazen Drive, Concord, NH 03302 is now the sole exemptee of the Hadley Falls Project, FERC No. 5379.

Dated: May 30, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–13393 Filed 6–5–13; 8:45 am]

**BILLING CODE 6717–01–P**

[1] 18 FERC ¶ 62,032, Order Granting Exemption From Licensing of a Small Hydroelectric Project of 5 Megawatts or Less.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 8498–018]**

### Lois Von Morganroth; Shiloh Warm Springs Ranch, LLC; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

On April 29, 2013, Lois Von Morganroth (transferor) and Shiloh Warm Springs Ranch, LLC (transferee) filed an application for the transfer of license for the L & M Angus Ranch Project, FERC No. 8498, located on Warm Springs Creek, a tributary to the Salmon River in Custer County, Idaho.

Applicants seek Commission approval to transfer the license for the L & M Angus Ranch Project from the transferor to the transferee.

*Applicants' Contact:* For Transferor: Ms. Lois Von Morganroth, 1223 Montana Avenue, Santa Monica, CA 90403, telephone (310) 451–8531. For Transferee: Mr. Christopher W. James, Shiloh Warm Springs Ranch, LLC, P.O. Box 510, Challis, ID 83226–0510, telephone (208) 879–4560 and Rekha K. Rao, Esq., Duncan, Weinberg, Genzer, and Pembroke, P.C., 1615 M Street NW., Suite 800, Washington, DC 20036, telephone (202) 467–6370.

*FERC Contact:* Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov*.

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice by the Commission. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed

electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–8498) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: May 30, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–13394 Filed 6–5–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 2161–034; 2207–045]**

### Wausau Paper Mills, LLC; Specialty Papers Acquisition, LLC; Notice of Application for Transfer of Licenses, and Soliciting Comments and Motions To Intervene

On April 22, 2013, Wausau Paper Mills, LLC (transferor) and Specialty Papers Acquisition, LLC (transferee) filed an application for transfer of licenses for the Rhinelander Hydroelectric Project, FERC No. 2161 and the Mosinee Hydroelectric Project, FERC No. 2207. The Rhinelander Hydroelectric Project is located on the upper Wisconsin River in Oneida County, Wisconsin. The Mosinee Hydroelectric Project is located on the Wisconsin River in Marathon County, Wisconsin.

Applicants seek Commission approval to transfer the licenses for Rhinelander Hydroelectric Project and the Mosinee Hydroelectric Project from transferor to transferee.

*Applicants' Contact:* Transferor: Ms. Elizabeth W. Whittle, Partner, Nixon Peabody LLP, 401 Ninth Street NW., Suite 900, Washington, DC 20004, telephone (202) 585–8338. For Transferee: Mr. Carl L. Reisner, Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019–6064, telephone (212) 373–3017.

*FERC Contact:* Patricia W. Gillis (202) 502–8735.

*Deadline for filing comments and motions to intervene:* 30 days from the issuance date of this notice by the Commission. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket numbers (P–2161 or P–2207) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: May 30, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–13401 Filed 6–5–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP13–73–000; CP13–74–000]**

### Sierrita Gas Pipeline LLC; Notice of Public Meeting for the Proposed Sierrita Pipeline Project

On June 18, 2013, the Federal Energy Regulatory Commission (FERC or Commission) Office of Energy Projects staff will hold a meeting to discuss Sierrita Gas Pipeline LLC's (Sierrita) plans for restoring the proposed Sierrita Pipeline Project right-of-way. The meeting is open to the public; however, the intent of the meeting is to provide the Altar Valley Conservation Alliance members and the landowners directly affected by the Sierrita Pipeline Project the opportunity to provide input on the design of Sierrita's restoration measures. The FERC staff will conduct this public meeting as part of its preparation of an environmental impact statement for the project. The meeting is scheduled as follows:

| Date and time | Location |
|---|---|
| Tuesday, June 18, 2013, 9:00 a.m. local time | Casino Del Sol Conference Room, 5655 W Valencia Road, Tucson, AZ 85757. |

All public meetings will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Additional information about the Sierrita Pipeline Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits, in the Docket Number field (i.e., CP13–73). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Dated: May 30, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–13396 Filed 6–5–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OR13–24–000]**

### Enterprise Liquids Pipeline LLC; Notice of Petition for Declaratory Order

Take notice that on May 29, 2013, pursuant to Rule 207(a)(2) or the Commission's Rules of Practices and Procedures, 18 CFR 385.207(a)(2)(2012), Enterprise Liquids Pipeline LLC filed a petition seeking a declaratory order approving a proposed proration policy for its new Aegis Pipeline project. The project is designed to provide capacity

to transport purity ethane from Mont Belvieu, Texas to Napoleonville, Louisiana, with various intermediate delivery points in Texas and Louisiana.

Any person desiring to intervene or to protest in this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on June 17, 2013.

Dated: May 30, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–13400 Filed 6–5–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 13625–003; Project No. 14504–000]**

## Lock+ Hydro Friends Fund XXX, LLC; FFP Project 121, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

Lock+ Hydro Friends Fund XXX, LLC and FFP Project 121, LLC filed preliminary permit applications pursuant to section 4(f) of the Federal Power Act proposing to study the feasibility of a hydropower project, to be located at the existing New Cumberland Locks and Dam on the Ohio River, near the town of New Cumberland, Hancock County, West Virginia and Jefferson County, Ohio. Both applications were filed electronically and given the filing date of March 1, 2013, at 8:30 a.m.[1] New Cumberland Locks and Dam is owned by the United States government and operated by the United States Army Corps of Engineers. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owner's express permission.

Lock+ Hydro Friends Fund XXX, LLC's application is for a successive preliminary permit. Its proposed project would consist of: (1) One new concrete-lined power canal; (2) one new approximately 260-foot-wide, 56-foot-high lock frame module, containing 17 turbines each having a nameplate capacity of 1.5 megawatts (MW), with a total installed capacity of 25.5 MW; (3) new flow control doors; (4) a new tailrace 260 feet wide by 250 feet long; (5) a new switchyard, transformer, and control room; (6) a new approximately 2,000-foot-long, 69-kilovolt (kV) transmission line from the new switchyard to an existing distribution line; and (7) appurtenant facilities. The project would have an estimated annual generation of 145,850 megawatt-hours.

*Applicant Contact:* Mr. Mark Stover, 900 Oakmont Lane, Suite 301, Westmont, IL 60559; (877) 556–6566 extension 711.

FFP Project 121, LLC's proposed project would consist of: (1) A new 250-foot-wide by 380-foot-long forebay; (2) a new 220-foot by 250-foot reinforced concrete powerhouse; (3) three new 16.6-MW horizontal bulb turbine-generators having a total combined generating capacity of 49.8 MW; (4) a new 300-foot-long concrete retaining wall downstream of the powerhouse; (5) a new 300-foot-wide by 515-foot-long tailrace area; (6) a new 60-foot-wide by 60-foot-long substation; (7) a new 0.8-mile-long, 36.7-kV transmission line; and (8) appurtenant facilities. The project would have an estimated annual generation of 251,600 megawatt-hours.

*Applicant Contact:* Daniel Lissner, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 252–7111.

*FERC Contact:* Tim Looney, (202) 502–6096.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent) or notices of intent to file competing applications for Project No. 13625: 60 days from the issuance of this notice.[2] Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy

[1] The Commission is open each day, except Saturdays, Sundays, and holidays, from 8:30 a.m. to 5:00 p.m. *See* 18 CFR 375.101(c) (2012). The two applications were filed between 5:00 p.m. on April 30, 2012 and 8:30 a.m. on March 1, 2013. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. *See id.* at 385.2001(a)(2).

[2] On March 19, 2013, the Commission mistakenly issued public notice of only FFP Project 121, LLC's preliminary permit application. That notice established a deadline of May 20, 2013 for filing comments, motions to intervene, competing applications (without notices of intent), and notices of intent to file competing applications. The filing deadline for both dockets is now extended to 60 days from the issuance of this notice.

Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about these projects, including a copy of either application can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13625 or P–14504) in the docket number field to access the documents. For assistance, contact FERC Online Support.

Dated: May 30, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–13395 Filed 6–5–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP13–481–000]**

### WBI Energy Transmission; Notice of Request Under Blanket Authorization

Take notice that on May 16, 2013, WBI Energy Transmission (WBI), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed a prior notice application pursuant to sections 157.216(b) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), and WBI's blanket certificate issued in Docket No. CP82–487–000, to abandon natural gas storage facilities located at the Baker Storage Reservoir in Fallon County, Montana. Specifically, WBI proposes to plug and abandon two natural gas storage wells and to abandon in place two associated well lines and remove one associated well line, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503, or telephone (701) 530–1560 or by email *keith.tiggelaar@wbienergy.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: May 30, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–13397 Filed 6–5–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–1372–000]**

### California Independent System Operator Corporation; Notice of FERC Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following date members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *www.caiso.com.*

June 6, 2013—Energy Imbalance Market.

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants and staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above captioned docket.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov,* (916) 294–0322 or Maury Kruth at *maury.kruth@ferc.gov,* (916) 294–0275.

Dated: May 30, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–13399 Filed 6–5–13; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9821–7; Docket ID No. EPA–HQ–ORD–2013–0189]**

### An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is announcing an extension of the public comment period for 30 days for the revised draft document titled, ''An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska'' (EPA–910–R–12–004Ba–c). The original **Federal Register** notice announcing the public comment period was published on April 30, 2013. This extension is

being granted in response to requests from interested parties. The document was revised by EPA after reviewing comments received from the public between May 18 and July 23, 2012, and input from the peer review panel held in August 2012. EPA conducted this assessment to determine the significance of Bristol Bay's ecological resources and the potential impacts of large-scale mining on these resources.

**DATES:** The public comment period began on April 26, 2013, and is being extended to end on June 30, 2013. Technical comments should be in writing and must be received by EPA by June 30, 2013.

**ADDRESSES:** The revised draft ''An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska'' is available primarily via the Internet on the EPA Region 10 Bristol Bay Web site at *www.epa.gov/bristolbay* as well as on the National Center for Environmental Assessment's Web site under the Recent Additions and the Data and Publications menus at *www.epa.gov/ncea.* A limited number of CD copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a CD copy, please provide your name, your mailing address, and the document title, ''An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.''

Comments on the report may be submitted electronically via *www.regulations.gov,* by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.* For technical information concerning the report, contact Judy Smith; telephone: 503–326–6994; facsimile: 503–326–3399; or email: *r10bristolbay@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Information About the Project/Document

The U.S. Environmental Protection Agency (EPA) conducted this assessment to provide a characterization of the biological and mineral resources of the Bristol Bay watershed, to increase understanding of the potential impacts of large-scale mining on the region's fish resources, and to inform future governmental decisions.

A previous draft was released for public comment on May 18, 2012 (77 FR 31353, May 25, 2012). Peer review panel members were announced June 5, 2012 (77 FR 33213, June 5, 2012), and the external peer review meeting was announced July 6, 2012 (77 FR 40037, July 6, 2012). The external peer review meeting was held in Anchorage, Alaska, August 7–9, 2012. This revised draft was completed by the agency to address public and peer review comments provided on the May 2012 draft.

EPA released this revised draft assessment for the purposes of public comment. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views.

EPA is seeking comments from the public on all aspects of the report, including the scientific and technical information presented in the report, the realistic mining scenario used, the data and information used to inform assumptions about mining activities and the evaluations of risk to the fishery, and the potential mitigation measures considered (and effectiveness of those measures). EPA is also specifically seeking any additional data or scientific or technical information about Bristol Bay resources or large-scale mining that should be considered in our evaluation. EPA will consider any public comments submitted in accordance with this notice when revising the document.

## II. Extension of Comment Period

EPA is extending the deadline for submitting comments on the revised draft document titled, ''An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska'' to June 30, 2013. An additional 30 days allows the public an opportunity to provide feedback on changes made to the assessment as a result of extensive input received in 2012. This extension is reasonable given the complexity and length of the revised draft assessment.

## III. How to Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2013–0189, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–566–9744.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 28221T), Docket ID No. EPA–HQ–ORD–2013–0189, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334, EPA West Building, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2013–0189. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available on-line at *www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the

Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*.

*Docket:* Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: June 3, 2013.

**Abdel Kadry,**

*Acting Deputy Director, National Center for Environmental Assessment.*

[FR Doc. 2013–13451 Filed 6–5–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R10–OAR–2013–0386; FRL–9820–6]**

## Adequacy Status of the Idaho, Northern Ada County $PM_{10}$ State Implementation Plan for Transportation Conformity Purposes

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of adequacy determination.

**SUMMARY:** In this notice, the EPA is notifying the public of its finding that the motor vehicle emissions budgets (MVEBs) for particulate matter with an aerodynamic diameter of a nominal 10 microns or less ($PM_{10}$), nitrogen oxides (NOx), and volatile organic compounds (VOC) for the years 2008, 2015 and 2023 in the Northern Ada County $PM_{10}$ State Implementation Plan, Maintenance Plan: Ten-Year Update (Maintenance Plan Update) are adequate for transportation conformity purposes. The Maintenance Plan Update was submitted to the EPA by the State of Idaho Department of Environmental Quality (IDEQ or the State) on March 11, 2013, with a clarification to the MVEB submitted on April 16, 2013. As a result of this finding, the Community Planning Association of Southwest Idaho, the Idaho Transportation Department and the U.S. Department of Transportation will be required to use these MVEBs for future transportation conformity determinations.

**DATES:** This finding is effective June 21, 2013.

**FOR FURTHER INFORMATION CONTACT:** The finding will be available at the EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.* You may also contact Claudia Vergnani Vaupel, U.S. EPA, Region 10 (OAWT–107), 1200 Sixth Ave., Suite 900, Seattle WA 98101; (206) 553–6121 or *vaupel.claudia@epa.gov*.

**SUPPLEMENTARY INFORMATION:** This action provides notice of the EPA's adequacy finding regarding the MVEBs in the Maintenance Plan Update in Northern Ada County. The EPA's finding was made pursuant to the adequacy review process for implementation plan submissions delineated at 40 CFR 93.118(f)(1) under which the EPA reviews the adequacy of an implementation plan submission prior to the EPA's final action on the implementation plan.

The IDEQ submitted the Maintenance Plan Update to the EPA on March 11, 2013, with a clarification to the MVEBs submitted on April 16, 2013. Pursuant to 40 CFR 93.118 (f)(1), the EPA notified the public of its receipt of this plan that would be reviewed for an adequacy determination on the EPA's Web site and requested public comment by no later than May 15, 2013. The EPA received no comments on the plan during that comment period. As part of our review, we also reviewed comments submitted to the IDEQ during the State's public hearing process and the State's response to those comments. One comment related to the MVEBs was submitted during the State's public hearing process. The commenter requested an explanation of the differences in the State's current and previous $PM_{10}$ emission budgets, and a justification for the State's reliance on an emission factor that differed from the factor previously relied-upon in the State's emission budget. The EPA finds that the State addressed the discrepancy identified by the commenter and adequately explained the derivation of the State's current $PM_{10}$ emission budget.

The EPA Region 10 sent a letter to the IDEQ on May 17, 2013 (adequacy letter), subsequent to the close of the EPA comment period, stating that the EPA found the new MVEBs in the submitted Maintenance Plan Update to be adequate for use in transportation conformity. A copy of the adequacy letter and its enclosure is available at the EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.* The new MVEBs that the EPA determined to be adequate for purposes of transportation conformity are listed in the following table.

MVEBs for Northern Ada County $PM_{10}$ Maintenance Area

[tons per day]

| Budget year | $PM_{10}$ | $NO_X$ | VOC |
|---|---|---|---|
| 2008 ..... | 31.0 | 29.5 | 12.6 |
| 2015 ..... | 42.9 | 29.5 | 12.6 |
| 2023 ..... | 60.1 | 34.2 | 17.2 |

Transportation conformity is required by section 176(c) of the Clean Air Act. The EPA's conformity rule requires transportation plans, programs, and projects to conform to state implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The minimum criteria by which we determine whether a SIP's MVEBs are adequate for conformity purposes are specified at 40 CFR 93.118(e)(4). The EPA's analysis of how the State's submission satisfies these criteria is found in the adequacy letter. The EPA's MVEB adequacy review is separate from the EPA's SIP completeness review and it also should not be used to prejudge the EPA's ultimate approval of the SIP. Even if we find the budget adequate, the SIP could later be disapproved.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: May 23, 2013.

**Dennis J. McLerran,**

*Regional Administrator, Region 10.*

[FR Doc. 2013–13449 Filed 6–5–13; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 8, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0856.

*Title:* Universal Service—Schools and Libraries Universal Service Program Reimbursement Forms.

*Form Numbers:* FCC Forms 472, 473 and 474.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

*Number of Respondents:* 25,925 respondents; 158,165 responses.

*Estimated Time per Response:* 1 hour per form.

*Frequency of Response:* On occasion and annual reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 1, 4(i), 4(j), 201–205, 214, 254, 312(d), 312(f), 403 and 503(b) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 158,165 hours.

*Total Annual Cost:* N/A.

*Privacy Impact Assessment:* No impacts.

*Nature and Extent of Confidentiality:* The Commission does not request that respondents submit confidential information to the Commission. If the Commission requests applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission will submit this information collection during this comment period to obtain the full, three year clearance from the Office of Management and Budget (OMB). The Commission is requesting approval for a revision. The Commission is also reporting a 15,015 hour burden increase adjustment. This is due to updated information based on actual participation in the E-rate program. The Commission requests a total hourly burden change for FCC Forms 472, 473 and 474 from 143,150 burden hours to 158,165 burden hours.

FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form). The Commission has made minor administrative revisions to the FCC Form 472 and associated instructions to ensure consistency with the Commission's rules and improve the clarity of the instructions. We also added a certification to the form that requires services providers to certify compliance with all E-rate rules.

FCC Form 473 (Service Provider Annual Certification Form) was modified the existing certification regarding recordkeeping on the FCC Form 473 to ensure consistency with 47 CFR 54.516 of the Commission's rules, which requires service providers to retain documentation for at least five years after the last day of the delivery of discounted services and we have modified the language regarding production of documents to the Universal Service Administrative Company (USAC) or the Fund Administrator. We have added a certification requiring service providers to certify that they have properly allocated eligible and ineligible service components. We have added a certification requiring service providers to attest that they will not pay any part of the non-discount share that is to be paid by applicants. We have also added certifications regarding the prohibition against kickback, gifts and participation while suspended or debarred. Finally, we have also added a certification to the FCC Form 473 that requires services providers to certify compliance with all E-rate rules. The instructions to the FCC Form 473 have been revised to reflect the changes to that form.

FCC Form 474 (Service Provider Invoice (SPI) Form). The Commission made minor administrative revisions to the FCC Form 474 and associated instructions to ensure consistency with the Commission's rules and to improve the clarity of the instructions. We have also added three certifications to the FCC Form 474 that requires services providers to certify compliance with all E-rate rules and also to verify that the services providers FCC Form 473 certifications are correct.

The purposes of each FCC form were described in the 60 day notice that was published on February 6, 2013 (78 FR 8527). All of the requirements contained in this information collection are necessary to implement the congressional mandate for the schools and libraries universal service support program and reimbursement process.

*OMB Control Number:* 3060–0986.

*Title:* Competitive Carrier Line Count Report and Self-Certification as a Rural Carrier.

*Form Numbers:* FCC Forms 525 and 481.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

*Number of Respondents:* 8,690 respondents; 8,804 responses.

*Estimated Time per Response:* .5 hours to 100 hours.

*Frequency of Response:* Annual, on occasion and quarterly reporting requirements, recordkeeping

requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154(i) and (j), 205, 221(c), 254, 303(r), 403, 410 and 1302 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 272,017 hours.

*Total Annual Cost:* N/A.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* Parties may submit confidential information in relation to sub-item 0 in item 12 of the supporting statement pursuant to a protective order. We note that USAC must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism; must not use the data except for the purposes of administering the universal service support program; and must not disclose data in company-specific form unless directed to do so by the Commission.

*Needs and Uses:* The Commission will submit this information collection as a revision during this comment period to obtain the full, three year clearance from the Office of Management and Budget (OMB).

There are no changes to the FCC Form 525, which is part of this information collection. New FCC Form 481 is being added to this information for which we seek OMB approval along with other information collection requirements. See the 60 day notice for specific details of the revision which was published in the **Federal Register** on February 25, 2013 (78 FR 12750).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary,Office of Managing Director.*

[FR Doc. 2013–13348 Filed 6–5–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Submitted for Emergency Review and Approval to the Office of Management and Budget (OMB)

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 8, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov.* Also, please submit your PRA comments to the FCC by email send them to: *PRA@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

**SUPPLEMENTARY INFORMATION:** The Commission is seeking emergency OMB approval for this new information collection by July 8, 2013.

*OMB Control Number:* 3060–XXXX.

*Title:* Connect America Challenge Process and Certifications.

*Form No.:* FCC Form 505.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 113 respondents; 113 responses.

*Estimated Time per Response:* 10 hours to 20 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections.

*Total Annual Burden:* 1,260 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* The Commission is not requesting that respondents submit confidential information to the Commission. However, respondents may request materials or information submitted to the Commission or to the Administrator be withheld from public inspection under 47 CFR 0.459 of the Commission's rules. We note that USAC must preserve the

*Needs and Uses:* The Commission will submit this new information collection to the Office of Management and Budget (OMB) under their emergency processing procedures. The Commission is seeking emergency OMB approval by July 8, 2013.

Under this information collection, the Commission proposes to collect information to determine what areas should be eligible for Phase II of Connect America Fund and to ensure that Connect America Fund Phase I deployment occur in areas that are eligible for support.

This information will be used to determine the amount of, and eligibility for, high-cost universal service support received by incumbent and competitive eligible telecommunications carriers under the Connect America Fund. To aid in collecting this information regarding the Phase II challenge process in a uniform fashion, the Commission has created the proposed new FCC Form 505, which parties should use in filing their Phase II challenges and responses with the FCC.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–13349 Filed 6–5–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before August 5, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov,* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0439.

*Title:* Section 64.201, Regulations Concerning Indecent Communications by Telephone.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Individuals or households.

*Number of Respondents and Responses:* 10,200 respondents; 10,200 responses.

*Estimated Time per Response:* .166 hours (10 minutes average per response).

*Frequency of Response:* On occasion reporting requirements; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for the information collection requirements is found at Section 223 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 223, Obscene or Harassing Telephone Calls in the District of Columbia or in Interstate or Foreign Communications.

*Total Annual Burden:* 1,693 hours.

*Total Annual Cost:* None.

*Nature and Extent of Confidentiality:* Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries''; published in the **Federal Register** on December 15, 2009, at 74 FR 66356, and became effective on January 25, 2010.

*Privacy Impact Assessment:* The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. The PIA may be reviewed at <*http://www.fcc.gov/omd/privacyact/Privacy_/Impact_Assessment.html*.> The FCC is in the process of updating the PIA to incorporate various revisions made to the SORN.

*Needs and Uses:* Under section 223 of the Act, common carriers are required, to the extent technically feasible, to prohibit access to obscene or indecent communications from the telephone of a subscriber who has not previously requested such access in writing, if the carrier collects charges from subscribers for such communications. 47 CFR 64.201 implements section 223 of the Act, and also include the following information collection requirements: (1) Adult message service providers notify their carriers in writing of the nature of their service; and (2) A provider of adult message services request that its carriers identify these services as such in bills to their subscribers. The information requirements are imposed on carriers, and on adult message service providers and those who solicit their services, to ensure that minors and anyone who has not consented to access such material are denied access to such material in adult message services.

*OMB Control Number:* 3060–0973.

*Title:* Section 64.1120(e), Verification of Orders for Telecommunications Service.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities.

*Number of Respondents and Responses:* 50 respondents; 150 responses.

*Estimated Time per Response:* 1 to 5 hours (average per response).

*Frequency of Response:* On occasion reporting requirements; Third-party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority citation for the information collection requirements is found at Section 258 of the Act, 47 U.S.C. 258.

*Total Annual Burden:* 350 hours.

*Total Annual Cost:* None.

*Nature and Extent of Confidentiality:* An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Pursuant to 47 CFR 64.1120(e), a carrier acquiring all or part of another carrier's subscriber base without obtaining each subscriber's authorization and verification will file a letter specifying certain information with the Commission, in advance of the transfer, and it will also certify that the carrier will comply with required procedures, including giving advance notice to the affected subscribers. These streamlined carrier change rules balance the protection of consumers' interests with ensuring that the Commission's rules do not unnecessarily inhibit routine business transactions.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–13346 Filed 6–5–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other

Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before August 5, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov,* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0665.

*Title:* Section 64.707, Public Dissemination of Information by Providers of Operator Services.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 448 respondents; 448 responses.

*Estimated Time per Response:* 4 hours (average per response).

*Frequency of Response:* On occasion reporting requirements; Third party disclosure.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority citation for the information collection requirements is found at Section 226 of the Act, 47 U.S.C 226.

*Total Annual Burden:* 1,792 hours.

*Total Annual Cost:* $44,800.

*Nature and Extent of Confidentiality:* An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* Pursuant to 47 CFR 64.707, providers of operator services must regularly publish and make available at no cost to requesting consumers written materials that describe any recent changes in operator services and choices available to consumers. Consumers use the information to increase their knowledge of the choices available to them in the operator services marketplace.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2013–13347 Filed 6–5–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[GN Docket No. 13–86; DA 13–1071]**

## FCC Extends Pleading Cycle for Indecency Cases Policy

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Federal Communications Commission Enforcement Bureau and Office of General Counsel extend the deadlines for filing comments and reply comments in GN Docket No. 13–86 by 30 days. On April 26, 2013, the National Association of Broadcasters requested an extension for filing comments and reply comments. We recognize the importance of affording all interested parties sufficient time to prepare their comments and to consider the comments filed in preparing reply comments as warranted. We also respect the interest of the public in having sufficient time for review and consideration of the various positions and concerns. Therefore, the extended deadline for filing comments is June 19, 2013, and the extended deadline for filing reply comments is July 18, 2013.

**DATES:** Written comments may be filed on or before June 19, 2013. Reply comments may be filed on or before July 18, 2013.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Eloise Gore, Associate Bureau Chief, Enforcement Bureau, at (202) 418–1066 or Jacob Lewis, Associate General Counsel, Office of the General Counsel, at (202) 418–1767. Please direct press inquiries to Mark Wigfield at (202) 418–0253.

**SUPPLEMENTARY INFORMATION:** Each document that is filed in this proceeding must display the docket number of this Notice, GN Docket No. 13–86, on the front page. The Public Notice, DA 13–1071, released May 10, 2013, is available for inspection and copying from 8 a.m. until 4:30 p.m., Monday through Thursday or from 8 a.m. until 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street SW., Washington, DC 20554. The complete text of the Public Notice may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160, facsimile (202) 488–5563, email *FCC@BCPIWEB.com,* or you may contact BCPI via its Web site, *http://www.bcpiweb.com.* When ordering documents from BCPI, please provide the appropriate FCC document number DA 13–1071. The Public Notice is also available on the Internet at the Commission's Web site through its Electronic Document Management System (EDOCS) at *http://hraunfoss.fcc.gov/edocs_public/.* Alternative formats are available to persons with disabilities (Braille, large print, electronic files, audio format); to obtain, please send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

All comments should refer to GN Docket No. 13–86.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[1] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.[2] Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules.[3]

[1] *See* 47 CFR 1.1200, 1.1206.

[2] *See* 47 CFR 1.1206(b).

[3] *Id.*

Federal Communications Commission.

**Eloise Gore,**

*Associate Chief, Enforcement Bureau.*

[FR Doc. 2013–13339 Filed 6–5–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meetings

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:15 a.m. on Tuesday, June 4, 2013, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: June 4, 2013.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2013–13537 Filed 6–4–13; 4:15 pm]

**BILLING CODE P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meetings

**AGENCY:** Federal Election Commission.

**DATE & TIME:** Tuesday, June 11, 2013 AT 10:00 a.m.

**PLACE:** 999 E Street NW., Washington, DC

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shelley E. Garr,**

*Deputy Secretary of the Commission.*

[FR Doc. 2013–13564 Filed 6–4–13; 4:15 pm]

**BILLING CODE 6715–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting Standards Subcommittee

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Standards.

*Time and Date:*

June 17, 2013 1:00 p.m.–5:00 p.m. e.d.t.
June 18, 2013 8:30 a.m.–5:00 p.m. e.d.t.

*Place:* Centers for Disease Control and Prevention, National Center for Health Statistics, 3311 Toledo Road, Auditorium B & C, Hyattsville, Maryland 20782, (301) 458–4524.

*Status:* Open.

*Purpose:* The purpose of the meeting is to discuss the current status of implementation of various HIPAA-related standards, code sets, identifiers, and operating rules and identify and discuss ways to address any existing issues. The meetings will discuss whether there is a need to update any of the standards and operating rules to improve opportunities for uptake. The meetings will also provide an opportunity to discuss the status of industry planning for implementation of the next set of adopted operating rules. In addition, the Subcommittee will review industry status of preparation for adoption of ICD–10, with a focus on payment transition processes, the SNOMED–ICD–10 project and other mapping/cross-walking and preparatory/planning issues, as well as new areas of relationships between ICD–10 and other code sets, including the next version of the Diagnostic and Statistical Manual of Mental Disorders, 5th edition. Finally, the Subcommittee will discuss new uses of ICD–10 data by different stakeholders, including relationships to new payment models, big data/data analytics, population management, public health activities, research, quality measurement and improvement.

The Subcommittee is interested in learning about industry innovations underway in health information technology and standards as the convergence between clinical and administrative information exchanges occurs, and industry moves from a claim-centric, transaction-based administrative information infrastructure to a quality-oriented and outcomes-based reporting and information exchange.

*Contact Person for More Information:* Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245 or Lorraine Doo, lead staff for the Standards Subcommittee, NCVHS, Centers for Medicare and Medicaid Services, Office of E-Health Standards and Services, 7500 Security Boulevard, Baltimore, Maryland, 21244, telephone (410) 786–6597. Program information as well as summaries of meetings and a roster of committee members are available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: May 29, 2013.

**James Scanlon,**

*Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 2013–13476 Filed 6–5–13; 8:45 am]

**BILLING CODE 4151–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

*Time and Date:*

June 19, 2013 9:00 a.m.–3:15 p.m. e.s.t.
June 20, 2013 10:00 a.m.–12:15 p.m. e.s.t.

*Place:* Centers for Disease Control and Prevention, National Center for Health Statistics, 3311 Toledo Road, Auditorium B & C, Hyattsville, Maryland 20782, (301) 458–4524.

*Status:* Open.

*Purpose:* At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day, the Committee will hear updates from the Department (HHS), the Centers for Medicare and Medicaid Services (CMS), the Office of the National Coordinator (ONC), the Office of Civil Rights (OCR), and the National Center for Health Statistics. The Committee will also review and discuss the letter and recommendations on attachments standards for healthcare initiated by the Standards Subcommittee.

After the lunch break, Subcommittee Co-chairs will brief the Committee on the hearing organized by the Population Health and Privacy Subcommittees to explore aspects of the Community as a Learning Health System. Members of the Population Health Subcommittee will brief the Committee about the Community Health Project Panel being organized for the 2013 APHA Annual Meeting, and NCHS staff will report on elements of convergence between electronic health records and vital records. Finally, the Subcommittee co-chairs will discuss convergence as it relates to concepts, priorities, opportunities and challenges.

On the morning of the second day, the Committee will discuss and vote on the attachments standards recommendation letter and hear a report on quality measures from the Quality Subcommittee Chair. Finally, a member of Academy Health's Health Data Consortium will present on their current activities and goals, and the Committee Chair will give final remarks and receive feedback from the membership regarding NCVHS strategic implementation. Once the full Committee adjourns, the NCVHS Working Group on HHS Data Access & Use will convene to discuss best practices and suggestions for release of open HHS data, and summarize future plans of the Working Group. Further information will be provided on the NCVHS Web site at *http://www.ncvhs.hhs.gov/.*

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon on the first day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

*Contact Person for More Information:* Substantive program information may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Summaries of meetings and a roster of committee members are available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda and a copy of the recommendation letter will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: May 29, 2013.

**James Scanlon,**

*Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 2013–13479 Filed 6–5–13; 8:45 am]

**BILLING CODE 4251–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''A Prototype Consumer Reporting System For Patient Safety Events.'' In accordance with the Paperwork Reduction Act; 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on September 11th, 2012 and allowed 60 days for public comment. AHRQ received 45 substantive comments and 64 personal stories from members of the public. These comments and personal stories raised 37 issues in the wording of the intake form, two issues with wording in other supporting documentation to the intake form, and 69 design issues that we categorized into 18 types of design concerns. To address these comments substantial revisions were made to the data collection tools and supporting documentation. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by July 8, 2013.

**ADDRESSES:** Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@OMB.EOP.gov* (attention: AHRQ's desk officer).

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Proposed Project

*A Prototype Consumer Reporting System for Patient Safety Events*

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, AHRQ's

collection of information for a Prototype Consumer Reporting System for Patient Safety Events. This project aims to design and test a system for collecting information from patients about health care safety events following standard definitions and formats. When complete, project findings will be available for use by local providers that wish to create or enhance their own local consumer reporting systems.

There is a growing body of evidence that many adverse medical events go unreported in current systems (Weissman et al., 2008). One important reason for this reporting gap is that most reporting systems do not presently accept or elicit reports from patients and their families (RTI 2010). AHRQ recognizes that the unique perspective of health care consumers could reveal important information that is not reported by health care providers. Patient reports could complement and enhance reports from providers and thus produce a more complete and accurate understanding of the prevalence and characteristics of medical adverse events (RTI, 2010).

In an effort to realize untapped potential of health care consumers to provide important information about patient safety events, AHRQ has funded the development of a prototype Consumer Reporting System for Patient Safety (CRSPS), designed to collect information from patients about medical errors that resulted or nearly resulted in harm or injury. The purpose of this project is to test the prototype for its ability to record data from consumers about patient safety events defined as an incident or near miss by the AHRQ Common Formats (AHRQ, 2010, details at: *www.pso.ahrq.gov/formats/commonfmt.htm*).

Currently there is no mechanism for consumers to report information about patient safety events defined as incidents or near misses by the AHRQ Common Formats, which were designed for use by providers of care. Such information is necessary for research on how to improve the quality of health care, promote patient safety, and reduce medical errors. There is a need to collect information about patient safety events from consumers and match these consumer reports to the information collected by providers, because the two sources may differ and, even when reporting on the same event, may provide complementary information. Examining data from both sources allows the project to determine to what extent patients are able to contribute to more complete and/or more detailed information.

This research has the following goals:

1. To develop and design a prototype system to collect information about patient safety events.

2. To develop and test web and telephone modes of a prototype questionnaire.

3. To develop and test protocols for a follow-up survey of health care providers.

This demonstration project is being conducted by AHRQ through its contractor, RAND Corporation, with Brigham and Women's Hospital, Dana Farber Cancer Institute, and ECRI Institute, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

**Method of Collection**

To achieve the goal of this project the following data collection efforts will be implemented:

1. Safety event intake form and follow up. The safety event intake form asks about a medical error or mistake, harm or injury as well as near misses. Patients, consumers, family members and other caregivers voluntarily report safety events through a Web site or by telephone. The questions ask what happened, details of the event, when, where, whether there was harm, the type of harm, contributing factors, disclosure, and whether the patient reported the event and to whom. Information is also collected regarding whether the respondent is willing to have CRSPS staff follow up to clarify information. If a respondent consents, CRSPS staff will follow up by phone and ask questions about any information that was not clear in the initial report and annotate the report with this information.

2. Health care provider follow up. For the subset of consumers that consent, patient safety officers at health care provider organizations who maintain the adverse event reporting system will contribute supplemental information about the consumer-reported incident which occurred at their facility. CRSPS staff will contact the health care organization to share the consumer report with the patient safety officer or other appointed liaison. The liaison will determine if the consumer-reported incident matches an event in the provider's Incident Reporting System, and if so, provide additional information.

Data collected will be analyzed to produce estimates and basic descriptive statistics on the quantity and type of consumer-reported patient safety events, examine the variability of responses to questions, examine the mode of data collection by event types, and conduct correlations, cross tabulations of responses and other statistical analysis.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours for respondents' time to participate in this information collection based on the expected number of respondents, 840 to the intake form and 84 to the provider follow up. The number of respondents is based on the size of the selected community, estimates of health care utilization, rates of adverse events, and response rates in similar investigations. The intake form is expected to maximally require 25 minutes via the web or telephone including the optional 10 minutes of follow-up questions, resulting in a total burden of 490 hours. The health care provider follow up is expected to take 20 minutes and only occurs for the estimated 10% of patients consenting; this form carries a total burden of 28 hours. The total burden is 518 hours annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Safety event intake form and follow up | 840 | 1 | 35/60 | 490 |
| Health care provider follow up | 84 | 1 | 20/60 | 28 |
| Total | 924 | NA | NA | 518 |

Exhibit 2 shows the estimated annualized cost burden for patients, $10,652, and for the health care organization, $885, for a total annualized cost burden of $11,537. Respondents will not incur any other costs beyond those associated with their time to participate.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form Name | Number of respondents | Total burden hours | Average hourly wage rate | Total cost burden |
|---|---|---|---|---|
| Safety event intake form and follow up | 840 | 490 | *$21.74 | $10,652 |
| Health care provider follow up | 84 | 28 | **31.61 | 885 |
| Total | 924 | 518 | NA | 11,537 |

*Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States, May 2011, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

**Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States, May 2011: Occupational Health and Safety Specialists (General Medical and Surgical Hospitals). U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes299011.htm.*

**Estimated Annual Cost to the Government**

AHRQ is supporting the conduct of this project as part of a contract with the RAND Corporation and the ECRI Institute. The estimated cost for this work is $899,827.

EXHIBIT 3—ESTIMATED ANNUALIZED COST

| Cost component | Total cost | Annualized cost |
|---|---|---|
| Intake Form Development | $364,375 | $242,917 |
| System Development | 413,860 | 275,907 |
| Project Management | 35,325 | 23,550 |
| Overhead | 86,267 | 57,511 |
| Total | 899,827 | 599,885 |

**Request for Comments**

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: May 30, 2013.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 2013–13341 Filed 6–5–13; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60-Day–13–13UW]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, at CDC 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Enhanced Utilization of Personal Dust Monitor Feedback—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

NIOSH, under Public Law 91–596, Sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970) has the responsibility to conduct research relating to innovative methods, techniques, and approaches dealing

with occupational safety and health problems.

This research relates to occupational safety and health problems in the coal mining industry. Coal Workers' Pneumoconiosis (CWP) or ''Black Lung Disease,'' caused by miners' exposure to respirable coal mine dust, is the leading cause of death due to occupational illness among U.S. coal miners. Although the prevalence of CWP was steadily decreasing, more recent data from NIOSH's chest x-ray surveillance data suggests that the prevalence of this disease is on the rise once again.

A Personal Dust Monitor (PDM) has become commercially available that provides miners with near real-time feedback on their exposure to respirable dust. If miners and mine managers know how to properly use the information provided by PDMs, they may be able to make adjustments to the work place and work procedures to try to reduce exposure to respirable dust. It is, therefore, important to study how, and under what circumstances, feedback from PDMs can be used to reduce respirable dust exposure and ultimately the incidence of Black Lung disease.

The objectives of the project are (1) to test an intervention designed to help miners use PDM feedback more effectively to reduce their exposure to respirable dust and (2) to document specific examples of ways that miners can use PDM feedback to alter their behaviors to decrease their exposure to respirable dust while working underground.

NIOSH proposes an intervention to lower miners' respirable dust exposure levels by involving them in the interpretation of PDM feedback and the discussion of ways to change their behaviors to decrease exposure to respirable dust. Upon completion of a pilot test, four underground coal mines will be involved in this research study. Miners who wear PDMs will be assigned to two groups, an experimental group and a control group. An effort will be made to recruit two mines that are currently using PDMs and two mines that have not used PDMs in the past. Large mines will be contacted for participation to make sure that there will be enough individuals wearing PDMs to create both an experimental group and a control group and to allow participants in the experimental group to form sub-groups during the weekly meetings based on their job classification. The PDM feedback discussions will be held weekly during the course of the six-week intervention period. Each session is expected to last for 45 minutes (15 minutes to fill out the worksheet and 30 minutes for the discussion). To control for unintended ''discussion'' between the control and experimental groups, selection of mine sites will favor mines where separate portals are used or where sister mines within the same company are located near one another.

For miners in the experimental group, data will be collected multiple times during the six-week intervention period. For miners in the control group, data will only be collected at the beginning and end of the intervention period. The assessment tools include: Surveys, worksheets, and structured interviews.

The experimental groups will receive the intervention which will include (1) an introduction to the project, (2) a pre-test concerning miners' attitude, knowledge, and behaviors toward PDM use, (3) a six-week intervention where PDM feedback is discussed in weekly meetings and worksheets are collected from mine personnel about their behaviors the previous week, and (4) a post-test concerning miners' attitude, knowledge, and behaviors toward PDM use and interviews of participants to identify changes in behaviors that were implemented to reduce respirable dust exposure. The control group will wear their PDM units when they are working underground but will not participate in weekly meetings. They will only complete the pre- and post-test and be interviewed upon completion of the intervention period.

The operators at each mine will provide daily respirable coal mine dust exposures levels (as measured by their PDMs) for all of the participating miners. There is already a software program in place that electronically records these exposure levels and exports them to a spreadsheet at each mine site.

It is estimated that across the 1 pilot mine and 4 intervention mines, up to 209 respondents will be surveyed; up to 109 will complete weekly worksheets; up to 49 respondents will be interviewed; and we will receive PDM output from up to 209 respondents. An exact number of respondents are unavailable at this time because the mine sites have not been selected.

After all of the information has been gathered, a variety of statistical and qualitative analyses will be conducted on the data to obtain conclusions with respect to miners' utilization of PDM feedback. The results from these analyses will be presented in a report describing what methods encourage miners to make behavior changes in response to their PDM output and what behavior changes work best at reducing miners' exposure to respirable dust. If the intervention is successful in reducing respirable coal mine dust exposure, details of the intervention will be more widely disseminated to coal mine operators so they can implement similar discussion groups at their mines.

There is no cost to respondents other than their time. The total estimated annualized burden hours are 622.

ESTIMATED ANNUALIZED BURDEN

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Coal Miners in Experimental Groups (from five different mines). | Pre-test Survey | 109 | 1 | 15/60 | 27 |
| | Week 2 Worksheet | 109 | 1 | 15/60 | 27 |
| | Week 3 Worksheet | 109 | 1 | 15/60 | 27 |
| | Week 4 Worksheet | 109 | 1 | 15/60 | 27 |
| | Week 5 Worksheet | 109 | 1 | 15/60 | 27 |
| | Post-test Survey | 109 | 1 | 15/60 | 27 |
| | PDM feedback Discussions (weekly) | 109 | 6 | 30/60 | 327 |
| | Interview | 29 | 1 | 1 | 29 |
| Mine Safety Operators for Experimental Groups (from five different mines). | Daily respirable coal mine dust exposure data. | 5 | 45 | 5/60 | 19 |
| Mine Safety Operators for Control Groups (from four different mines). | Daily respirable coal mine dust exposure data. | 4 | 45 | 5/60 | 15 |

ESTIMATED ANNUALIZED BURDEN—Continued

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Coal Miners in Control Groups (from four different mines). | Pre-test Survey | 100 | 1 | 15/60 | 25 |
| | Post-test Survey | 100 | 1 | 15/60 | 25 |
| | Interview | 20 | 1 | 1 | 20 |
| Total | | | | | 622 |

**Ron A. Otten,**

*Director, Office of Scientific Integrity Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2013–13434 Filed 6–5–13; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Title:* Annual Collection of Three Performance Measures for the Low Income Home Energy Assistance Program (LIHEAP) and Transition of Collection Instrument for Annual Report on Households Assisted and LIHEAP Grantee Survey.

*OMB No:* New Collection

*Description:* In response to the 2010 Government Accountability Office (GAO) report, *Low Income Home Energy Assistance Program—Greater Fraud Prevention Controls are Needed* (GAO–10–621), and in consideration of the recommendations issued by the LIHEAP Performance Measures Implementation Work Group, the Office of Community Services (OCS) is planning to require the collection and reporting of three new performance measures by its State LIHEAP grantees and the District of Columbia, beginning in FY 2014. These performance measures are:

1. The average reduction in energy burden for households receiving LIHEAP fuel assistance;
2. The percent of unduplicated households where LIHEAP prevented a potential home energy crisis; and
3. The percent of unduplicated households where LIHEAP benefits restored home energy.

Each of the above performance measures will require the reporting of data elements through a web-based data collection and reporting system. All State LIHEAP grantees and the District of Columbia will be required to report the information below through this new web-based system. This reporting will be optional for Tribes/Tribal Organizations and Territories. OCS will provide training and technical assistance to LIHEAP grantees on how to collect and report these new data.

The following lists the specific data grantees will report to OCS in support of each performance measure:

**The Average Reduction in Energy Burden for Households Receiving LIHEAP Fuel Assistance**

- The average annual or annualized gross income for LIHEAP households receiving energy assistance. Gross income includes whatever LIHEAP grantees determine as countable income.
- The average annual total LIHEAP fuel assistance benefit (includes all bill payment assistance).
- The number of LIHEAP households using each of the six energy sources as their primary heating/cooling source. These include Natural Gas, Electricity, Fuel Oil, Propane, Wood and Coal.
- The average annual primary home energy expenditures of LIHEAP households for each of the four following energy sources: Natural Gas, Electricity, Fuel Oil, and Propane.
- For each heating fuel type, the number of LIHEAP recipient households who report using a secondary source of heat.
- Annual Heating Fuel Consumption: The grantee would need to collect information from each client's heating fuel vendor on the client's annual heating fuel consumption.
- Annual Electricity Consumption: For each household that has a nonelectric main heating fuel and uses cooling equipment, the grantee would need to collect information from the client's electricity vendor on the client's annual electricity usage.

**The Percent of Unduplicated Households Where LIHEAP Prevented a Potential Home Energy Crisis**

- The number of households who had a notice from a bulk fuel vendor regarding an unpaid or past due balance (e.g., vendor will not make next delivery) and LIHEAP benefits were used to purchase fuel.
- The number of households who inform LIHEAP staff that they are nearly out of deliverable fuel (firewood, propane, kerosene, etc.) and LIHEAP benefits were used to purchase fuel. The exact definition of ''nearly out of fuel'' is left to the discretion of each grantee.
- The number of households who had a Past Due or Disconnect Notice from their utility and LIHEAP benefits were used to pay utility bill.
- The number of households where LIHEAP benefits resulted in repair or replacement of operable heating or cooling equipment.

**The Percent of Unduplicated Households Where LIHEAP Benefits Restored Home Energy**

- The number of households that are out of fuel and LIHEAP services result in bulk fuel delivery or purchase.
- The number of households that have no utility service and LIHEAP benefits result in reconnection of services.
- The number of households where LIHEAP benefits resulted in repair or replacement of inoperable heating or cooling equipment.

State grantees will report the data elements on a new form (see attached) that will be available in a system currently in use by the Administration for Children and Families (ACF), the On-Line Data Collection (OLDC) system. Grantees already have the capacity to submit other ACF forms via OLDC. OCS intends to make all required reports available for submission via OLDC, including the reporting of six currently approved data collections:

1. LIHEAP Carryover and Reallotment Report—OMB Control No. 0970–0106;
2. LIHEAP Household Report (short and long formats)—OMB Control No. 0970–0060
3. LIHEAP Grantee Survey—OMB Control No. 0970–0076;
4. LIHEAP Leveraging Report—OMB Control No. 0970–0121;

5. LIHEAP Program Integrity Assessment Supplement—OMB Control No. 0970–0075; and
6. LIHEAP Model Plan (Detailed and Abbreviated)—OMB Control No. 0970–0075.

The content and annual burden estimates for the above existing data collections will remain unchanged. The only modification is the instrument of the data collections, which will now be through OLDC.

The information is being collected for the Department's annual LIHEAP Report to Congress. The data also provides information about the need for LIHEAP funds. Finally, the data are used in the calculation of LIHEAP performance measures under the Government Performance and Results Act of 1993. The data elements will improve the accuracy of measuring LIHEAP targeting performance and LIHEAP cost efficiency.

*Respondents:* State Governments and the District of Columbia

ANNUAL BURDEN ESTIMATES FOR PERFORMANCE MEASURES

| Performance measure | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Percentage of Reduction in Household Energy Burden | 51 | 1 | 60 | 3,060 |
| Number of Utility Service Restorations | 51 | 1 | 20 | 1,020 |
| Number of Crises Averted | 51 | 1 | 20 | 1,020 |

*Estimated Total Annual Burden Hours:* 5,100.

As LIHEAP is a block grant, there is a wide spectrum of capacity to collect and report data among grantees. The estimated burden hours displayed above are for the average LIHEAP grantee, assuming data collection systems and agreements already in place. For those grantees that would need to establish such agreements and systems, estimated burden for the initial year of reporting would more closely resemble 400 hours for each performance measure. However, after the systems are in place, estimated burden for the collection of these data will more closely reflect the figures in the table above.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Prmenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2013–13384 Filed 6–5–13; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

### Agency Information Collection Activities; Proposed Collection; Comment Request; University Centers for Excellence in Developmental Disabilities Education, Research, and Service—Annual Report

**AGENCY:** The Administration on Intellectual and Developmental Disabilities (AIDD), Administration for Community Living (ACL), HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration on Intellectual and Developmental Disabilities (AIDD), now part of the Administration for Community Living, is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by July 8, 2013.

**ADDRESSES:** *OIRA_submission@omb.eop.gov* or by fax to 202.395.5806. Attn: OMB Desk Officer for ACL, Office of Information and Regulatory Affairs, OMB.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Johnson, at 202–690–5982 or *jennifer.johnson@acl.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, the Administration on Intellectual and Developmental Disabilities (now part of the Administration for Community Living) has submitted the following proposed collection of information to OMB for review and clearance.

Section 104 (42 U.S.C. 15004) of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act of 2000) directs the Secretary of Health and Human Services to develop and implement a system of program accountability to monitor the grantees funded under the DD Act of 2000. The program accountability system shall include the National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service (UCEDDs) authorized under Part D of the DD Act of 2000. In addition to the accountability system, Section 154 (e) (42 U.S.C. 15064) of the DD Act of 2000 includes requirements for a UCEDD Annual Report. In response to the 60-day **Federal Register** notice related to this proposed data collection and published on January 15, 2013 in Volume 78, ten sets of comments were received. Most of the comments provided recommendations for enhancing the quality and clarity of the information to be collected. The comments resulted in some revisions to the proposed data collection tools. The originally proposed data collection tools, the comments with responses and a revised set of data collection tools may be obtained by contacting Jennifer Johnson at *jennifer.johnson@acl.hhs.gov* or 202–690–5982. AIDD estimates the

burden of this collection of information as 1,412 average burden hours per responses, for 67 UCEDDs—Total burden is 94,604 hours per year.

Dated: June 3, 2013.

**Kathy Greenlee,**

*Administrator and Assistant Secretary for Aging.*

[FR Doc. 2013–13421 Filed 6–5–13; 8:45 am]

**BILLING CODE 4154–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0190]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requirements Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, as Amended by the Family Smoking Prevention and Tobacco Control Act

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by July 8, 2013.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0671. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Requirements Under the Comprehensive Smokeless Tobacco Health Education Act of 1986, as Amended by the Family Smoking Prevention and Tobacco Control Act—(OMB Control Number 0910–0671)—Extension**

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31) into law. Section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (the Smokeless Tobacco Act) (15 U.S.C. 4402), as amended by section 204 of the Tobacco Control Act, requires, among other things, that all smokeless tobacco product packages and advertisements bear one of four required warning statements. Section 3(b)(3)(A) of the Smokeless Tobacco Act requires that the warnings be displayed on packaging and advertising for each brand of smokeless tobacco ''in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer'' to, and approved by, FDA.

This information collection—the submission to FDA of warning plans for smokeless tobacco products—is statutorily mandated. The warning plans will be reviewed by FDA, as required by the Smokeless Tobacco Act, to determine whether the companies' plans for the equal distribution and display of warning statements on packaging and the quarterly rotation of warning statements in advertising for each brand of smokeless tobacco products comply with section 3 of the Smokeless Tobacco Act, as amended.

Based on the Federal Trade Commission's (FTC's) previous experience with the submission of warning plans and FDA's experience with smokeless tobacco companies (e.g., correspondence associated with user fees under section 919 of the Federal Food, Drug, and Cosmetic Act, as amended by the Tobacco Control Act (21 U.S.C. 387s)), FDA estimates that there are 36 companies affected by this information collection. To account for the entry of new smokeless tobacco companies that may be affected by this information collection, FDA is estimating the total number of respondents to be 100.

When the FTC requested an extension of their approved information collection in 2007, based on over 20 years implementing the warning plan requirements and taking into account increased computerization and improvements in electronic communication, the FTC estimated submitting an initial plan would take 60 hours. Based on FDA's experience over the past several years, FDA believes the estimate of 60 hours to complete an initial rotational plan continues to be reasonable.

In the **Federal Register** of March 18, 2013 (78 FR 16678), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours | Total capital costs |
|---|---|---|---|---|---|---|
| Submission of rotational plans for health warning label statements | 100 | 1 | 100 | 60 | 6,000 | $1,200 |

[1] There are no operating and maintenance costs associated with this collection of information.

FDA estimates a total of 100 respondents at 1 response each and 60 burden hours per response for a total of 6,000 burden hours (100 respondents × 1 response × 60 burden hours = 6,000 total burden hours). In addition, capital costs are based on all 100 respondents mailing in their submission at a postage rate of $12 for a 5-pound parcel (business parcel post mail delivered from the farthest delivery zone). Therefore, FDA estimates that the total postage cost for mailing the rotational warning plans to be $1,200.

Dated: June 3, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–13448 Filed 6–5–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–P–1034]**

### Determination That SUBOXONE (Buprenorphine Hydrochloride and Naloxone Hydrochloride) Sublingual Tablets, 2 Milligrams/0.5 Milligrams and 8 Milligrams/2 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that SUBOXONE (buprenorphine hydrochloride (HCl) and naloxone HCl) sublingual tablets, 2 milligrams (mg)/0.5 mg and 8 mg/2 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for buprenorphine HCl and naloxone HCl sublingual tablets, 2 mg/0.5 mg and 8 mg/2 mg, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** David E. Markert, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6248, Silver Spring, MD 20993–0002, 301–796–3602.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

SUBOXONE (buprenorphine HCl and naloxone HCl) sublingual tablets, 2 mg/0.5 mg and 8 mg/2 mg, are the subject of NDA 20–733, held by Reckitt Benckiser Pharmaceuticals, Inc. (Reckitt), and initially approved on October 8, 2002. SUBOXONE is indicated for maintenance treatment of opioid dependence.

In a letter dated September 18, 2012, Reckitt notified FDA that SUBOXONE (buprenorphine HCl and naloxone HCl) sublingual tablets, 2 mg/0.5 mg and 8 mg/2 mg, were being discontinued. Shortly thereafter, Reckitt publicly announced that it was discontinuing this product for safety reasons and that it had submitted a citizen petition requesting that FDA require all manufacturers of buprenorphine-containing products for the treatment of opioid dependence to implement certain public health safeguards (Ref. 1).[1] Reckitt later informed the Agency that it ceased distributing SUBOXONE sublingual tablets in March 2013, at which time FDA moved the product to the ''Discontinued Drug Product List'' section of the Orange Book.

Lachman Consultant Services, Inc. (Lachman), submitted a citizen petition dated September 27, 2012 (Docket No. FDA–2012–P–1034), under 21 CFR 10.30, requesting that the Agency determine whether SUBOXONE (buprenorphine HCl and naloxone HCl) sublingual tablets, 2 mg/0.5 mg and 8 mg/2 mg, were withdrawn from sale for reasons of safety or effectiveness. The petitioner noted that Reckitt had publicly announced that it was discontinuing this product.

After considering Lachman's citizen petition and reviewing our records, including the safety analysis that the Agency prepared in connection with Reckitt's citizen petition, FDA has determined under § 314.161 that SUBOXONE (buprenorphine HCl and naloxone HCl) sublingual tablets, 2 mg/0.5 mg and 8 mg/2 mg, were not withdrawn for reasons of safety. We described the basis for this determination in our letter response to Reckitt's citizen petition (available at *http://www.regulations.gov* under Docket No. FDA–2012–P–1028). Since the issuance of that response, we have updated our reviews of relevant literature and data on this product. We found no additional information during this process that would indicate that SUBOXONE (buprenorphine HCl and naloxone HCl) sublingual tablets, 2 mg/0.5 mg and 8 mg/2 mg, were, or should have been, withdrawn from sale for reasons of safety.

FDA has also determined under § 314.161 that SUBOXONE (buprenorphine HCl and naloxone HCl) sublingual tablets, 2 mg/0.5 mg and 8 mg/2 mg, were not withdrawn for reasons of effectiveness. We have reviewed our records and other relevant data sources, and have found no information that would indicate that this product was ineffective as a maintenance treatment of opioid dependence.

Accordingly, the Agency will continue to list SUBOXONE (buprenorphine HCl and naloxone HCl) sublingual tablets, 2 mg/0.5 mg and 8 mg/2 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to SUBOXONE (buprenorphine HCl and naloxone HCl) sublingual tablets, 2 mg/0.5 mg and 8 mg/2 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

[1] The citizen petition (Docket No. FDA–2012–P–1028), which was submitted on September 25, 2012, also requested that FDA refuse to approve any ANDAs for buprenorphine HCl and naloxone HCl products for opioid dependence until the Agency determined whether SUBOXONE sublingual tablets were discontinued for safety reasons. In its February 22, 2013, response to the citizen petition, FDA concluded that this request was premature because Reckitt had not yet withdrawn SUBOXONE sublingual tablets from sale. Nonetheless, the Agency conducted a full review and analysis of the safety issues raised in Reckitt's citizen petition and determined, on the basis of the data available at that time, that withdrawal of SUBOXONE sublingual tablets from sale was not necessary for reasons of safety.

## II. References

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov*. (FDA has verified the Web site address in this reference section, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. ''Further US RB Pharmaceuticals Announcement,'' *http://www.rb.com/site/rkbr/templates/mediainvestors general2.aspx?pageid=1332&cc=GB*, Reckitt Benckiser Group plc, September 25, 2012. Web. May 17, 2013.

Dated: May 31, 2013.

**Janet Woodcock,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 2013–13446 Filed 6–5–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0012]**

### ''Script Your Future'' Medication Adherence Campaign

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of grant funds for the continuing support of a national effort to promote the importance of medication adherence to enhance the health of Americans. Medication adherence is taking medicine as directed to treat an illness or disease in order to get the best health outcome possible for each patient. Nearly three out of four Americans report that they do not take their medication as directed. One in three people never fill their prescriptions. The annual price tag for medication adherence failure is estimated to be $290 billion, and the impact on the medical system and patients from this lack of adherence may result in relapses or recurrences of medical symptoms, increases in hospital visits, or even death. FDA is committed to addressing this issue, which has enormous implications for public health and the U.S. economy, by, in part, continuing its financial and other contributions to a carefully planned, well-executed effective national campaign begun in 2010 by the National Consumers League (NCL) called ''Script Your Future''.

To continue and enhance this important public health initiative, the Division of Health Communications (DHC)/Office of Communications (OCOMM)/Center for Drug Evaluation and Research (CDER) in FDA seeks to assist the National Consumers League in the development of new online resources and tools for patients, engagement of public and private partners to build on and complement existing medication adherence programs, education of health care professionals with strategies to share with patients, continuous evaluation of the campaign to enhance and improve it, expansion of public-private partnerships, strengthening of this national forum focused on informing consumers about medication adherence, and tailoring messaging to subpopulations of consumers who may need adaptations or special efforts to inform and educate them.

**DATES:** Important dates are as follows:

1. The application due date is July 1, 2013.

2. The anticipated start date is August 2013.

3. The opening date is the date this announcement is published in the **Federal Register**.

4. The expiration date is July 2, 2013.

**ADDRESSES:** Submit the paper application to: Gladys Melendez, Grants Management (HFA–500), Food and Drug Administration, 5630 Fishers Lane, Rm. 2032, Rockville, MD 20857; and a copy to Elaine Frost, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Rm. 1140, Silver Spring, MD 20903. For more information, see section III of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Paula Rausch, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Rm. 4110, Silver Spring, MD 20903, 301–796–3121; or Gladys Melendez, Grants Management Branch (HFA–500), Food and Drug Administration, 5630 Fishers Lane, Rm. 2032, Rockville, MD 20857, 301–827–7175.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please obtain the full FOA from *gladys.bohler@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Funding Opportunity Description

Request for Application: FDA–RFA–13–027.

Catalog of Federal Domestic Assistance: 93.103

*A. Background*

In order to fulfill FDA's mission to protect public health by assuring the safety, efficacy, and security of human drugs; and helping the public to obtain the accurate, science-based information they need to use medications in ways that maintain and improve their health, FDA seeks to continue its participation in a national campaign aimed at promoting the importance of medication adherence to enhance the health of Americans.

FDA recognizes medication adherence as a formidable health problem that results in health system and human costs that adversely impact our nation. FDA has a responsibility as a public health agency to educate and inform the public and health professionals about the importance of medication adherence. Since 2010, FDA has been a key government stakeholder in the NCL's initiative, along with other major government agencies and private and nonprofit organizations, to address the issue of poor medication adherence. FDA is committed to educating and informing the public about this issue, including key subpopulations such as those with low literacy and health literacy, or that faces health disparities or is economically disadvantaged.

The NCL is the nation's oldest consumer organization. With FDA and its other government partners, NCL launched its nationwide ''Script Your Future'' campaign in 2010 to address the issue of poor medication adherence. NCL possesses an extensive research and evaluation framework from past medication outreach efforts that helped ensure the campaign's medication adherence messages and materials are based on sound communication science. In addition, NCL assembled a coalition of more than 130 public-private partners to mobilize resources that can increase awareness and outreach to the public far beyond what FDA would be able to do alone to promote increased understanding and positive actions among the general public and health professionals related to this critical issue. Future NCL plans are in sync with FDA goals for a national medication adherence campaign and FDA seeks to enhance this carefully designed communications intervention. FDA has been and remains a key partner with NCL on issues pertaining to the safe use of medicines.

*B. Research Objectives*

The following are the primary objectives that FDA/CDER/OCOMM/DHC seeks to achieve through further support of this national outreach campaign: (1) To collaborate with a large group of public-private partners that can significantly increase awareness and outreach far beyond what FDA would be able to do on its own to promote increased understanding and positive actions among the general public and health professionals related to this critical issue; (2) to develop new online resources and tools for patients; (3) to educate health care professionals with strategies to share with patients; (4) to continually evaluate the campaign to improve and enhance it; (5) to tailor campaign messaging to subpopulations of consumers who may need adaptations to best inform and educate them; (6) to further targeted market outreach through community events and activities; (7) to develop new campaign materials for patients and health care providers; (8) to further widespread dissemination of campaign materials to consumers and health care professionals across the country, including at pharmacies, community centers, workplaces, clinic offices, health fairs, and local events; (9) to provide counseling and education directly to consumers about adherence in their communities, including through the involvement of students studying pharmacy, medicine, nursing, and other health professions; (10) to explore new media opportunities for dissemination of the program at the local, State and national levels, in trade press, online journals, radio, television, and more; and (11) to extend outreach through social media, such as Twitter chats, free text message reminders, online pledges through Facebook and Twitter and other channels.

The following are some specific objectives that FDA believes can further enhance the ''Script Your Future'' campaign: (1) Addition of patient and family caregiver testimonials to the campaign Web site; (2) creation of a custom ''I Will'' tab on the ''Script Your Future'' Facebook page; (3) translation of the radio public service announcement from English to Spanish; (4) development of ''Script Your Future-in-A-Box,'' a turnkey package incorporating press background materials and other elements; and (5) organization of a public event in fall 2013 and a study to measure the reach of events, media, and partner engagement.

*C. Eligibility Information*

Competition is limited to the NCL because it has unique expertise and capacity found nowhere else. Specifically, the FDA/CDER/OCOMM, DHC, seeks to continue and enhance its public health mission to educate and inform the public and health professions about the importance of medication adherence by awarding a grant to the NCL to advance its national campaign, ''Script Your Future.'' This campaign represents a comprehensive, integrated approach to raise awareness about the problem of poor medication adherence, and FDA has served as a key government stakeholder since 2010. Because FDA has been a partner in the formative stages of this campaign and has seen evidence indicating that it has already had an impact in helping to resolve the problem of medication adherence, FDA seeks to continue funding new dimensions of the campaign, especially to serve U.S. subpopulations of people having low literacy/health literacy, or who face health disparities and social and economic disadvantages.

**II. Award Information/Funds Available**

*A. Award Amount*

The total amount of funding for this grant is $200,000 over 2 years. Applications budgets will be limited to $100,000 in the first year and $100,000 in the second year depending on the availability of funds. The number of awards anticipated is one individual award.

*B. Length of Support*

The term for this grant will begin in August 2013 for a period of 2 years through August 15, 2015.

**III. Paper Application, Registration, and Submission Information**

To submit a paper application in response to this FOA, applicants should first review the full announcement. Persons interested in applying for a grant may obtain an application at *http://grants.nih.gov/grants/forms.htm*. For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With System for Award Management (SAM)
- Step 3: Register With Electronic Research Administration (eRA) Commons

Steps 1 and 2, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp*. Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp*. After you have followed these steps, submit paper applications to: Gladys Melendez, Grants Management Branch (HFA–500), Food and Drug Administration, Rm. 2031, 5630 Fishers Lane, Rockville, MD 20857.

Dated: June 3, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–13447 Filed 6–5–13; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

*Date:* June 26, 2013.

*Time:* 11:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Jay R. Radke, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *jay.radke@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 31, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–13373 Filed 6–5–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Cognitive Life.

*Date:* June 28, 2013.

*Time:* 3:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, Ph.D., D.Sc., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Diabetes and Alzheimer's Disease.

*Date:* July 19, 2013.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* William Cruce, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7704, *crucew@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 31, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–13372 Filed 6–5–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–11–043 Calcium Metabolism Program Project.

*Date:* June 24, 2013.

*Time:* 12:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Studies on Health Insurance Designs on Diabetes Complications.

*Date:* July 1, 2013.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 31, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–13374 Filed 6–5–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Board of Scientific Counselors for Basic Sciences and Clinical Sciences and Epidemiology National Cancer Institute.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors for Basic Sciences National Cancer Institute.

*Date:* July 8, 2013.

*Time:* 9:00 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 31, C Wing, 6th Floor, Conf. Rm. 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Florence E. Farber, Ph.D., Executive Secretary, Institute Review Office, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 3W240, Rockville, MD 20850–9711, 240–276–5666, *ff6p@nih.gov.*

*Name of Committee:* Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

*Date:* July 9, 2013.

*Time:* 9:00 a.m. to 3:50 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 31, C Wing, 6th Floor, Conf. Rm. 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Brian E. Wojcik, Ph.D., Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, 9609 Medical Center Drive, Room 3W414, Rockville, MD 20850–9711, 240–276–5665, *wojcikb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction;

93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 31, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–13371 Filed 6–5–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Agency Information Collection Activities: Request for Expressions of Interest (EOI) To Perform a Chemical Defense Demonstration Project

**AGENCY:** Office of Health Affairs, Chemical Defense Program, DHS.

**ACTION:** 30-Day Notice and request for comments; New Collection, 1601—NEW

**SUMMARY:** The Department of Homeland Security, Office of Health Affairs, Chemical Defense Program will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on February 8, 2013, at FR 9405 for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

**DATES:** Comments are encouraged and will be accepted until July 8, 2013. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**FOR FURTHER INFORMATION CONTACT:** If additional information is required contact: The Department of Homeland Security (DHS), Office of Health Affairs, Chemical Defense Program, Attn.: CAPT Joselito Ignacio, *joselito.ignacio@hq.dhs.gov,* 202–254–5738.

**SUPPLEMENTARY INFORMATION:** The Chemical Defense Program seeks to obtain information from respondents interested in hosting a demonstration project aimed at developing a comprehensive chemical defense framework. The authority for the Chemical Defense Program to collect this information can be found in Public Law 112–74, Consolidated Appropriations Act, 2012 and Conference Report 112–331.

The information requested on the form includes: Name of state, local, tribal, or territorial government agency; address; submitter's name, position and contact information; identified venue for demonstration project; interest in developing a chemical defense capability; specific reasons for the communities interest and needs for a chemical defense capability; community chemical threat assessed risks if applicable; any additional information respondent requests for consideration. As identified in Public Law 112–74 and Conference Report 112–331, the Chemical Defense Program must competitively select the locations for conducting the chemical defense demonstration projects. The Chemical Defense Program will use the provided information for the selection process.

**Analysis**

*Agency:* Office of Health Affairs Chemical Defense Program, DHS.

*Title:* Request for Expressions of Interest (EOI) To Perform a Chemical Defense Demonstration Project.

*OMB Number:* 1601—NEW.

*Frequency:* Once.

*Affected Public:* State, Local, or Tribal Government.

*Number of Respondents:* 25.

*Estimated Time per Respondent:* 20 hours.

*Total Burden Hours:* 500 Hours.

Dated: May 23, 2013.

**Margaret H. Graves,**

*Acting Chief Information Officer.*

[FR Doc. 2013–13324 Filed 6–5–13; 8:45 am]

**BILLING CODE 9110–9B–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2013–0024]**

### Review and Revision of the National Infrastructure Protection Plan

**AGENCY:** National Protection and Programs Directorate, DHS.

**ACTION:** Notice and request for comments.

**SUMMARY:** This notice informs the public that the Department of Homeland Security (DHS) National Protection and Programs Directorate (NPPD) Office of Infrastructure Protection (IP) is currently reviewing the National Infrastructure Protection Plan (NIPP) to conform to the requirements of Presidential Policy Directive 21, *Critical Infrastructure Security and Resilience,* and, as part of a comprehensive national review process, solicits public comment on issues or language in the NIPP that need to be updated.

**DATES:** Written comments are encouraged and will be accepted until July 8, 2013.

**ADDRESSES:** Written comments and questions about the NIPP should be forwarded to Lisa Barr, DHS/NPPD/IP/Office of Strategy and Policy, 245 Murray Lane SW., Mail Stop 8530, Arlington, VA 20598–8530. Written comments should reach the contact person listed no later than July 8, 2013. Comments must be identified by ''DHS–2013–0024'' and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Email: EO-PPDTaskForce@hq.dhs.gov.* Include the docket number in the subject line of the message.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. All comments received (via any of the identified methods) will be posted without change to *http://www.regulations.gov*, including any personal information provided. You may submit your comments and

material by one of the methods specified in the **ADDRESSES** section. Please submit your comments and material by only one means to avoid the adjudication of duplicate submissions. If you submit comments by mail, your submission should be an unbound document and no larger than 8.5 by 11 inches to enable copying and electronic document management. If you want DHS to acknowledge receipt of comments by mail, include with your comments a self-addressed, stamped postcard that includes the docket number for this action. We will date your postcard and return it to you via regular mail. For purposes of review, the 2009 NIPP can be found at *http://www.dhs.gov/nipp.*

*Docket:* Background documents and comments can be viewed at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Lisa Barr, DHS/NPPD/IP/Office of Strategy and Policy; 245 Murray Lane SW., Mail Stop 8530, Washington, DC 20528–8530 or 703–235–9542.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

The Department of Homeland Security (DHS) invites interested persons to contribute suggestions and comments for the rewrite of the National Infrastructure Protection Plan (NIPP) by submitting written data, views, or ideas. Comments that will provide the most assistance to DHS in updating the NIPP will explain the reason for any recommended changes to the NIPP and include data, information, or authority that supports such recommended change. Linking changes to specific sections of the NIPP would also be helpful. There will be an opportunity to review a revised document reflecting the various changes sometime this summer.

## II. Background

On February 12, 2013, President Obama signed Presidential Policy Directive 21 [1] (PPD–21), *Critical Infrastructure Security and Resilience,* which builds on the extensive work done to date to protect and enhance the resilience of the Nation's critical infrastructure. This directive aims to clarify roles and responsibilities across the Federal Government and establish a more effective partnership with owners and operators and state, local, tribal, and territorial entities to enhance the security and resilience of critical infrastructure.

President Obama also signed Executive Order (EO) 13636 [2] on February 12, 2013, entitled *Improving Critical Infrastructure Cybersecurity.* By issuing the EO and PPD together, the Administration is taking an integrated approach to strengthening the security and resilience of critical infrastructure against all hazards, through an updated and overarching national framework that acknowledges the increased role of cybersecurity in securing physical assets.

PPD–21 sets forth several actions that the Secretary of Homeland Security shall take to implement the directive. One of these is to develop a successor to the NIPP to address the implementation of PPD–21; the requirements of Title II of the Homeland Security Act of 2002, as amended; and alignment with the National Preparedness Goal and System required by Presidential Policy Directive 8 (PPD–8).

The 2009 NIPP set forth a comprehensive risk management framework and defined roles and responsibilities for DHS; the Sector-Specific Agencies (SSAs); other Federal departments and agencies; state, local, tribal, and territorial governments; critical infrastructure owners and operators; and other stakeholders in industry, academia, and non-governmental organizations. The NIPP provides a coordinated approach for establishing national priorities, goals, and requirements so that resources can be applied in the most effective manner. The NIPP risk management framework responds to an evolving risk landscape; as such, there will always be changes to the NIPP—from relatively minor to more significant—to ensure it remains relevant to the critical infrastructure mission over time.

## III. Initial List of Issues To Be Updated in the NIPP

PPD–21 specifies the following elements that shall be included in the successor to the NIPP:

- Identification of a risk management framework to be used to strengthen the security and resilience of critical infrastructure;
- Protocols to synchronize communication and actions within the Federal Government; and
- A metrics process to be used to measure the Nation's ability to manage and reduce risks to critical infrastructure.

Some other actions required of the Secretary for Homeland Security under PPD–21 also must be addressed in the successor to the NIPP, including a description of functional relationships within DHS and across the Federal Government related to critical infrastructure security and resilience; and any changes to the sector partnership resulting from the evaluation of the existing public-private partnership model. Finally, the plan must consider sector dependencies on energy and communications systems, and identify pre-event and mitigation measures or alternate capabilities during disruptions to those systems.

The NIPP review will be coordinated with a broad range of critical infrastructure partners and other stakeholders. This notice extends an invitation to the public to provide feedback on the 2009 NIPP and those changes that should or should not be made. To assist the reviewer, DHS has conducted a review of expected changes to the NIPP and an initial list of potential changes is included in this notice. The purpose of this notice is to request public comment on additional changes that would help fulfill the mandate of PPD–21 to make the successor to the NIPP more relevant and useful in strengthening the security and resilience of the Nation's critical physical and cyber infrastructure. Some of the known changes that will be addressed in the successor to the NIPP are:

- Changes to the sectors and designated SSAs;
- Changes in terminology based on recent directives;
- Alignment with PPD–8 on National Preparedness;
- Updates to information-sharing tools and mechanisms;
- Critical infrastructure security and resilience regulatory programs;
- Updates on measurement and reporting and risk-informed resource allocation;
- Review and update cycles for the NIPP and Sector-Specific Plans (SSPs);
- Closer integration of physical and cybersecurity, including increased coordination of research and development efforts;
- Review of the risk management approach;
- Sector dependencies on energy and communications systems;
- Increased regional emphasis of critical infrastructure security and resilience; and
- Other issues, such as aging infrastructure and climate change adaptation.

[1] PPD–21 can be found at: *http://www.whitehouse.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil.*

[2] EO 13636 can be found at: *http://www.gpo.gov/fdsys/pkg/FR-2013-02-19/pdf/2013-03915.pdf.*

These changes are discussed further below.

**IV. Discussion of Issues To Be Addressed in the Successor to the NIPP**

Implementing PPD–21 will require DHS to address a number of specific issues in reviewing and updating the NIPP. However, since the NIPP was last issued in 2009, critical infrastructure programs across the Nation have matured and produced lessons learned and best practices from day-to-day operations, exercises, and actual incidents that should be incorporated in any successor to the plan. The new document must incorporate developments including new laws, EOs, Presidential directives, and regulations, and procedural changes to critical infrastructure security and resilience activities based on real-world events and emerging risks.

Some of the known changes that will be addressed in this review of the NIPP are described below. DHS welcomes comments and ideas on areas that should be updated, expanded, changed, added, or deleted as appropriate.

*Changes to the Sectors and SSAs*

PPD–21 reduces the number of sectors from 18 to 16 by designating two previously existing sectors as new subsectors. National Monuments and Icons is now a subsector of the Government Facilities Sector and Postal and Shipping is a subsector of the Transportation Systems Sector. In addition, the PPD changed the names of two sectors to better reflect their scope:

- The Banking and Finance Sector is now the Financial Services Sector; and
- The Water Sector is now the Water and Wastewater Systems Sector.

Finally, PPD–21 designates new co-SSAs for two sectors, as follows: The General Services Administration joins DHS as a co-SSA of the Government Facilities Sector and the U.S. Department of Transportation joins DHS as a co-SSA for the Transportation Systems Sector.

*Changes in Terminology and Alignment With Presidential Policy Directive 8, National Preparedness*

PPD–21 changes the lexicon by using critical infrastructure security and resilience in place of critical infrastructure protection. The new terminology is consistent with the national preparedness construct established by PPD–8. The five mission areas under PPD–8—prevention, protection, mitigation, response, and recovery—link to the two major outcomes that preparedness seeks to achieve: Security, which closely aligns with prevention and protection; and resilience, which more closely aligns with mitigation, response, and recovery. There is overlap among all of the PPD–8 mission areas and between those mission areas and the concepts of security and resilience. The new terminology supports the move toward a more comprehensive approach to overall national preparedness, of which critical infrastructure security and resilience are major components. The use of the term ''security'' in this context applies to all hazards and not simply threats from terrorism.

*Updates to Information-Sharing Tools and Mechanisms*

PPD–21 sets forth the following strategic imperative: ''A secure, functioning, and resilient critical infrastructure requires the efficient exchange of information, including intelligence, between all levels of government and critical infrastructure owners and operators.'' To that end, several of the actions required of DHS in the PPD are designed to improve and streamline information sharing between the Federal Government and critical infrastructure partners and stakeholders. DHS requests comments and input on ways that the current NIPP information-sharing approach and mechanisms could be changed and improved.

*Critical Infrastructure Security and Resilience Regulatory Programs*

Through existing regulations, the Federal Government can mandate security-related activities and protocols, as appropriate and authorized by Congress, to better ensure that a baseline level of security is being maintained at various types of critical infrastructure facilities. An example of currently existing regulatory regimes that enhance critical infrastructure security and resilience include regulations pursuant to the U.S. Coast Guard's Maritime Transportation Security Act (MTSA), 33 CFR Parts 101–107, which requires certain critical infrastructure located adjacent to a U.S. port or waterway to conduct facility security assessments and develop and implement facility security plans. DHS is not proposing new regulatory authority through this notice, but is requesting input on ways to better integrate existing regulatory programs into the NIPP framework.

*Updates on Measurement and Reporting Processes and Risk-Informed Resource Allocation*

DHS has been working to improve metrics and reporting processes to assess national critical infrastructure security and resilience efforts and identify opportunities for improvement. Over the last year, DHS and the SSAs have worked to streamline data collection processes, and identify links between the National Preparedness Goal core capabilities and the national critical infrastructure protection outcomes. The successor to the NIPP will reflect the maturation of metrics processes, and efforts to use those metrics to inform resource allocation decisions.

*Review and Update Cycles for the NIPP and SSPs*

The revision cycle for the SSPs follows the NIPP revision cycle by one year, to ensure that the concepts and strategic direction provided in the NIPP are captured in the next edition of the SSPs. In 2010, government and private sector partners agreed that a four-year review cycle was sufficient to keep the NIPP and SSPs current and would provide better alignment with the Quadrennial Homeland Security Review. This change took effect in July 2011, placing the next review and rewrite of the NIPP in 2013 and the next reissue of the SSPs in 2014.

Following development of the successor to the NIPP in late 2013, DHS will issue guidance to the SSAs for revising the SSPs. This guidance will cover the major updates and changes to the NIPP to address implementation of PPD–21 so the sectors can incorporate these updates into the SSPs as appropriate.

*Closer Integration of Physical and Cyber Security*

DHS leads an Interagency Task Force charged with accomplishing the integrated implementation of PPD–21 and EO 13636. The task force includes representatives from DHS, the SSAs, and other Federal departments and agencies with a role in critical infrastructure security and resilience and/or cybersecurity. The task force established various working groups to address the deliverables required for implementation of the EO and PPD. Many of these deliverables will influence and be reflected in the successor to the NIPP and the document will address physical and cybersecurity in a more integrated and holistic manner.

A key part of this approach includes greater integration and coordination of research and development efforts for physical and cybersecurity and strategic planning to support the development and use of incentives to facilitate this integration. DHS requests comments on the timeframe and requirements for research, development, and incentives

for increased cyber-physical integration and how the successor to the NIPP can integrate the concepts and implementation of physical and cybersecurity.

*Review of the Risk Management Approach*

The NIPP's risk management framework establishes an approach for setting goals; identifying infrastructure; combining consequence, vulnerability, and threat information to produce a comprehensive, systematic, and rational assessment of national or sector risk; developing security measures and resilience strategies; and measuring effectiveness.

It is designed to respond to an ever-changing risk environment and, as such, it provides an adaptable framework to address evolving and emerging risks to critical infrastructure. DHS is not seeking to make significant changes to the basic structure and concept of the risk management framework but rather to review how PPD–21 and other recent directives and events will influence the context and application of the risk management framework going forward.

*Sector Dependencies on Energy and Communications Systems*

PPD–21 acknowledges the dependency of all critical infrastructure sectors on energy and communications systems and functions and requires that these dependencies be specifically considered in reviewing the NIPP. The updated document will consider pre-event and mitigation measures or alternate capabilities that communities and critical infrastructure owners and operators may bring to bear during disruptions to those systems and functions. This aligns with implementation of the National Preparedness Goal under PPD–8.

*Increased Regional Emphasis*

As DHS has sought to improve the efficacy of the delivery of critical infrastructure protection and resilience support and assistance to state, local, tribal, territorial, and private sector partners, it has moved toward a more decentralized regional model that leverages field-based employees. The regional model synchronizes with DHS's effort to provide more tailored support to specific geographic regions to more closely address their unique challenges, such as region-specific hazards (e.g., earthquakes, hurricanes), and operating environments.

*Other Issues—Aging Infrastructure and Climate Change Adaptation*

The areas of aging infrastructure and climate change are appreciated as risks of concern to critical infrastructure security and resilience. As a result, these issues will be considered as part of the all-hazards approach in reviewing and rewriting the NIPP.

Dated: May 31, 2013.

**Robert Kolasky,**

*Director for Strategy and Policy, Office of Infrastructure Protection, National Protection and Programs Directorate, Department of Homeland Security.*

[FR Doc. 2013–13427 Filed 6–5–13; 8:45 am]

**BILLING CODE 9110–9P–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2013–0461]**

### National Offshore Safety Advisory Committee

**AGENCY:** United States Coast Guard, DHS.

**ACTION:** Notice of teleconference meeting.

**SUMMARY:** The National Offshore Safety Advisory Committee (NOSAC) will meet via teleconference to receive a Final Report from the Subcommittee on the Implementation of Standards from the International Labor Organization—Maritime Labour Convention of 2006, a task statement presented at the 17–18 April, 2013 NOSAC meeting. Upon committee approval, the final report will be presented to the Coast Guard for acceptance. Additionally the committee will reconvene the Subcommittee on commercial diving safety to consider recommendations for commercial diving operational standards. This teleconference meeting will be open to the public.

**DATES:** The teleconference meeting will take place on Tuesday June 25, 2013, from 11 a.m. to 2 p.m. EST. This teleconference meeting may end early if all business is finished before 2 p.m. If you wish to make oral comments at the teleconference meeting, simply notify Mr. Scott Hartley before the teleconference, as specified in the **ADDRESSES** section, or the designated Coast Guard staff at the meeting. If you wish to submit written comments or make a presentation, submit your comments or request to make a presentation by June 7, 2013.

**ADDRESSES:** The Committee will meet via teleconference. To participate by phone, contact the Alternate Designated Federal Officer (ADFO) listed below in the **FOR FURTHER INFORMATION CONTACT** section to obtain teleconference information. Note the number of teleconference lines is limited and will be available on a first-come, first-served basis. To join those participating in this teleconference from U.S. Coast Guard Headquarters, come to Room 5–1222, U.S. Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593. You must present a valid, government-issued photo identification to gain entrance to the Coast Guard Headquarters building.

If you want to make a presentation, send your request by June 7, 2013, to Mr. Scott Hartley, NOSAC ADFO, telephone 202–372–1437, Commandant (CG–OES–2), 2100 Second Street SW., Stop 7126, Washington, DC 20593–7126 or by fax to 202–372–1926. To facilitate public participation we are inviting public comment on the issues to be considered by the committee as listed in the ''AGENDA'' section below. You may submit a written comment on or before June 7, 2013 or make an oral comment during the public comment portion of the teleconference.

To submit a comment in writing, use one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Scott.E.Hartley@uscg.mil.* Include the docket number (USCG–2013–0461) on the subject line of the message.
- *Fax:* (202) 372–1925. Include the docket number (USCG–2010–0164) on the subject line of the fax.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. We encourage use of electronic submissions because security screening may delay the delivery of mail.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.
- To avoid duplication, please use only one of the above methods.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*Docket:* For access to the docket to read documents or comments related to this Notice, go to *http://www.regulations.gov,* insert USCG–2013–0461 in the Keyword ID box, press Enter, and then click on the item you are interested in viewing.

**FOR FURTHER INFORMATION CONTACT:** Commander Rob Smith, Designated Federal Official (DFO) of NOSAC, Commandant (CG–OES–2), U.S. Coast Guard, 2100 Second Street SW., Stop 7126, Washington, DC 20593–0001; telephone (202) 372–1410, fax (202) 372–1926, or Mr. Scott Hartley, Alternate Designated Federal Official (ADFO) of NOSAC, Commandant (CG–OES–2), U.S. Coast Guard, 2100 Second Street SW., Stop 7126, Washington, DC 20593–0001; telephone (202) 372–1437, fax (202) 372–1926. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. (Pub. L. 92–463). NOSAC provides advice and recommendations to the Department of Homeland Security on matters and actions concerning activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within U.S. Coast Guard jurisdiction.

### Agenda of Meeting

The agenda for June 25 is as follows:

(1) Presentation, discussion and acceptance of the final report from the Subcommittee on the Task Statement dealing with U.S. Implementation of Standards from International Labor Organization—Maritime Labour Convention of 2006 presented at the April 17 and 18, 2013 NOSAC meeting in New Orleans.

(2) Discussion of the reconvening of the Subcommittee on commercial diving safety to consider recommendations for improved commercial diving operational standards.

(3) Public comment.

The meeting agenda will be available on *https://homeport.uscg.mil/nosac.*

### Public Participation

We have scheduled the last fifteen minutes of the meeting, scheduled to be from 1:45 to 2:00 p.m., for oral comments from the public. If you wish to make an oral comment, please contact Mr. Scott Hartley, listed in the **FOR FURTHER INFORMATION CONTACT** section, either before the meeting or at the meeting when the members of the audience are requested to state their interest in commenting. We request that you limit your oral comments to 3 minutes. Please note that this public comment period may start before 1:45 p.m. if all other agenda items have been covered and may end before 2:00 p.m. if all of those wishing to comment have done so.

For information on facilities or services for individuals with disabilities or to request special assistance at the teleconference, please contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

Dated: May 31, 2013.

**J.G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. 2013–13381 Filed 6–5–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2013–0002]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final notice.

**SUMMARY:** New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

**DATES:** The effective date for each LOMR is indicated in the table below.

**ADDRESSES:** Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA

Map Service Center at *www.msc.fema.gov.*

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Alabama: Lee (FEMA Docket No.: B–1245). | City of Auburn (11–04–8290P). | The Honorable Bill Ham, Jr., Mayor, City of Auburn, 144 Tichenor Avenue, Auburn, AL 36830. | Public Works Department, 171 North Ross Street, Auburn, AL 36830. | May 4, 2012 | 010144 |
| Louisiana: Ascension (FEMA Docket No.: B–1305). | Unincorporated areas of Ascension Parish (11–06–4231P). | The Honorable Tommy Martinez, President, Ascension Parish, 208 East Railroad Avenue, Gonzales, LA 70737. | Ascension Parish President's Office, 208 East Railroad Avenue, Gonzales, LA 70737. | March 29, 2013 | 220013 |
| Oklahoma: | | | | | |
| Tulsa (FEMA Docket No.: B–1289). | City of Collinsville (12–06–4005P). | The Honorable Herb Weaver, Mayor, City of Collinsville, 106 North 12th Street, Collinsville, OK 74021. | 106 North 12th Street, Collinsville, OK 74021. | March 28, 2013 | 400360 |
| Tulsa (FEMA Docket No.: B–1289). | Unincorporated areas of Tulsa County (12–06–4005P). | The Honorable John Smaligo, Chairman, Tulsa County Board of Commissioners, 500 South Denver Avenue, Tulsa, OK 74103. | Tulsa County Annex Building, 633 West 3rd Street, Room 140, Tulsa, OK 74127. | March 28, 2013 | 400462 |
| Texas: | | | | | |
| Bexar (FEMA Docket No.: B–1289). | Unincorporated areas of Bexar County (12–06–2613P). | The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205. | Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207. | March 25, 2013 | 480035 |
| Harris (FEMA Docket No.: B–1289). | Unincorporated areas of Harris County (12–06–1133P). | The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002. | Harris County, 10555 Northwest Freeway, Houston, TX 77092. | March 28, 2013 | 480287 |
| Tarrant (FEMA Docket No.: B–1305). | City of North Richland Hills (12–06–2052P). | The Honorable T. Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, TX 76180. | City Hall, 7301 Northeast Loop 820, North Richland Hills, TX 76180. | April 4, 2013 | 480607 |
| Travis (FEMA Docket No.: B–1289). | City of Austin (12–06–2306P). | The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767. | Watershed Protection Department, 505 Barton Springs Road, 12th Floor, Austin, TX 78704. | April 1, 2013 | 480624 |
| Travis (FEMA Docket No.: B–1302). | Unincorporated areas of Travis County (12–06–2557P). | The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, TX 78767. | Travis County Permits Counter, 700 Lavaca Street, Suite 547, Austin, TX 78701. | March 25, 2013 | 481026 |
| Travis (FEMA Docket No.: B–1289). | Unincorporated areas of Travis County (12–06–2306P). | The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, TX 78767. | Travis County Permits Counter, 700 Lavaca Street, Suite 547, Austin, TX 78701. | April 1, 2013 | 481026 |
| Webb (FEMA Docket No.: B–1289). | City of Laredo (12–06–2634P). | The Honorable Raul G. Salinas, Mayor, City of Laredo, 1110 Houston Street, Laredo, TX 78040. | 1120 San Bernardo Avenue, Laredo, TX 78042. | March 18, 2013 | 480651 |
| Virginia: | | | | | |
| Loudoun (FEMA Docket No.: B–1305). | Town of Purcellville (12–03–0984P). | The Honorable Robert W. Lazaro, Jr., Mayor, Town of Purcellville, 221 South Nursery Avenue, Purcellville, VA 20132. | Town Hall, 221 South Nursery Avenue, Purcellville, VA 20132. | March 18, 2013 | 510231 |
| Loudoun (FEMA Docket No.: B–1305). | Unincorporated areas of Loudoun County (12–03–0984P). | The Honorable Scott K. York, Chairman-at-Large, Loudoun County Board of Supervisors, 1 Harrison Street Southeast, 5th Floor, Mailstop 1, Leesburg, VA 20175. | Loudoun County Building and Development Department, 1 Harrison Street Southeast, Leesburg, VA 20175. | March 18, 2013 | 510090 |
| Prince William (FEMA Docket No.: B–1289). | Unincorporated areas of Prince William County (12–03–0457P). | The Honorable Melissa S. Peacor, County Executive, Prince William County, 1 County Complex Court, Prince William, VA 22192. | Prince William County Watershed Management Branch, 5 County Complex Court, Suite 170, Prince William, VA 22192. | March 18, 2013 | 510119 |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2013–13376 Filed 6–4–13; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4117–DR; Docket ID FEMA–2013–0001]**

### Oklahoma; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–4117–DR), dated May 18, 2013, and related determinations.

**DATES:** *Effective Date:* May 27, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for

this disaster is closed effective May 27, 2013.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2013–13377 Filed 6–5–13; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–IA–2013–N131; FXIA16710900000P5–123–FF09A30000]**

### Endangered Species; Marine Mammals; Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

**DATES:** We must receive comments or requests for documents on or before July 8, 2013. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by July 8, 2013.

**ADDRESSES:** Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:**

#### I. Public Comment Procedures

*A. How do I request copies of applications or comment on submitted applications?*

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received.

If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

#### III. Permit Applications

*A. Endangered species*

Applicant: Brad Blevins, Edmond OK; PRT–804095

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the Galapagos tortoise (*Chelonoidis nigra*) and radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Blue Sky Aviaries LLC, Christiansburg, VA; PRT–05648B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for golden parakeet (*Guarouba guarouba),* Cuban parrot *(Amazona leucocephala),* and Vinaceous parrot (*Amazona vinacea)* to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Masquerade Exotic Animals, LLC, Milton, GA; PRT–05246B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for ring-tailed lemur (*Lemur catta*), black and white ruffed lemur (*Varecia variegata*), red ruffed lemur (*Varecia rubra*), black lemur (*Eulemur macaco*), white-fronted lemur (*Eulemur albifrons*), brown lemur (*Eulemur fulvus*), cotton-top tamarin (*Saguinus*

*oedipus*), Diana monkey (*Cercopithecus diana*), mandrill (*Mandrillus sphinx*), lar gibbon (*Hylobates lar*), and siamang (*Symphalangus syndactylus*), to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Cord Offermann, Austin, TX; PRT–05160B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for Galapagos tortoise (*Chelonoidis nigra*), radiated tortoise (*Astrochelys radiata),* yellow-spotted river turtle (*Podocnemis unifilis*), tartaruga (*Podocnemis expansa*), and spotted pond turtle (*Geoclemys hamiltonii*), to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Pittsburgh Zoo, Pittsburgh, PA; PRT–840690

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

*Families*
- Cercopithecidae
- Felidae (does not include Jaguar, Ocelot, or Margay)
- Hominidae
- Lemuridae
- Crocodylidae

*Species*
- Black rhinoceros (*Diceros bicornis)*
- African wild dog (*Lycaon pictus)*
- White-cheeked gibbon (*Nomascus leucogenys)*
- Cotton-top tamarin (*Saguinus oedipus)*
- Aruba Island rattlesnake *(Crotalus durissus unicolor)*

Applicant: Wesley Williams, Orangeburg, SC; PRT–156736

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the Galapagos tortoise (*Chelonoidis nigra*) and radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: City of Gainesville, dba Frank Buck Zoo, Gainesville, TX; PRT–06588B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for ring-tailed lemur (*Lemur catta*), black and white ruffed lemur (*Varecia variegata*), red ruffed lemur (*Varecia rubra*), black lemur (*Eulemur macaco*), cotton-top tamarin (*Saguinus oedipus*), lar gibbon (*Hylobates lar*), clouded leopard (*Neofelis nebulosa*), scimitar-horned oryx (*Oryx dammah*), Galapagos tortoise (*Chelonoidis nigra*), and radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: KHJ Property Management LLC, Del Rio, TX; PRT–93972A

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), Arabian oryx (*Oryx leucoryx*), and dama gazelle (*Nanger dama*), to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Timothy Gazankas, Drayton Valley, Alberta, Canada; PRT–06849B

The applicant requests a permit to export the sport-hunted trophy of one male scimitar-horned oryx (*Oryx dammah*), culled from a captive herd maintained in the State of Texas, for the purpose of enhancement of the survival of the species.

Applicant: Animal Conservation Unlimited, Virginia Beach, VA; PRT–06673B

The applicant requests a permit for the export of one captive-bred jackass penguin (*Spheniscus demersus*) to Assiniboine Park Zoo, Winnipeg, Manitoba, Canada, for the purpose of enhancement of the survival of the species.

Applicant: Louis Waters, Utopia, TX; PRT–682850

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

*Families*
- Equidae
- Bovidae
- Cervidae

*Species*
- Lar gibbon (*Hylobates lar*)

Applicant: Zoological Society of San Diego, dba San Diego Zoo Global, San Diego, CA; PRT–694912

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

*Families*
- Bovidae
- Camelidae
- Canidae
- Cebidae
- Cercopithecidae
- Cervidae
- Cheirogaleidae
- Daubentoniidae
- Equidae
- Felidae (does not include jaguar, margay or ocelot)
- Hominidae
- Hylobatidae
- Indriidae
- Lemuridae
- Loridae
- Macropodidae
- Potoroidae
- Rhinocerotidae
- Tapiridae
- Tarsiidae
- Ursidae
- Accipitridae
- Cathartidae
- Columbidae
- Gruidae
- Psittacidae (does not include thick-billed parrots)
- Rheidae
- Sturnidae (does not include *Aplonis Pelzeln*i)
- Threskiornithidae
- Crocodylidae
- Iguanidae
- Testudinidae
- Varanidae
- Cryptobranchidae

*Genus*
- Tragopan
- Apalone
- Trionyx
- Trachemys

*Species*
- Asian elephant *(Elephas maximus)*
- Koala *(Phascolarctos cinereus)*
- Indian python *(Python molurus molurus)*

Applicant: Robert Blome, Florence, AZ; PRT–785246

The applicant requests amendment of their captive-bred wildlife registration under 50 CFR 17.21(g) to include spotted pond turtle, (*Geoclemys hamiltonii*), yellow-spotted river turtle (*Podocnemis unifilis*), tartaruga

(*Podocnemis expansa*), Cuban ground iguana (*Cyclura nubila nubila*), Grand Cayman blue iguana (*Cyclura lewisi*), and Cayman Brac ground iguana (*Cyclura nubila caymanensis*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Corley Ranch, Madisonville, TX; PRT–06542B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Corley Ranch, Madisonville, TX; PRT–06662B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Douglas Dix, dba Deer Fern Farms, Arlington, WA; PRT–07311B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for spotted pond turtle, (*Geoclemys hamiltonii*), yellow-spotted river turtle (*Podocnemis unifilis*), tartaruga (*Podocnemis expansa*), Cuban ground iguana (*Cyclura nubila nubila*), Grand Cayman blue iguana (*Cyclura lewisi*) and to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

*B. Endangered Marine Mammals and Marine Mammals*

Applicant: USFWS, Marine Mammals Management, Anchorage, AK; PRT–041309

The applicant requests renewal of the permit to take northern sea otters (*Enhydra lutris kenyoni*) from the wild in the State of Alaska via capture, tagging, biological sampling, carcass retrieval, and aerial and boat surveys for the purpose of scientific research on the status of sea otters in Alaska. Permittee would also import and export biological specimens. This notification covers activities to be conducted by the applicant over a 5-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2013–13408 Filed 6–5–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–IA–2013–N130; FXIA16710900000P5–123–FF09A30000]**

### Endangered Species; Marine Mammals; Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

**ADDRESSES:** Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

**SUPPLEMENTARY INFORMATION:** On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) the application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| | | **Endangered Species** | |
| 678490 | Knoxville Zoological Park | 77 FR 44264; July 27, 2012 | October 22, 2012. |
| 724896 | Species Survival Fund | 77 FR 44264; July 27, 2012 | October 22, 2012. |
| 73893A | A.C. Ranch | 77 FR 46514; August 3, 2012 | September 27, 2012. |
| 75535A | Dub Wallace Ranch LLC | 77 FR 46514; August 3, 2012 | September 27, 2012. |
| 73894A | A.C. Ranch | 77 FR 46514; August 3, 2012 | September 27, 2012. |
| 75592A | Dub Wallace Ranch LLC | 77 FR 46514; August 3, 2012 | September 27, 2012. |
| 79770A | Kansas O Bar Ranch LLC | 77 FR 49453; August 16, 2012 | September 27, 2012. |
| 80109A | Paul Dickson | 77 FR 49453; August 16, 2012 | September 27, 2012. |
| 79771A | Kansas O Bar Ranch LLC | 77 FR 49453; August 16, 2012 | September 27, 2012. |
| 80201A | Kyle Lange | 77 FR 49453; August 16, 2012 | October 22, 2012. |
| 80158A | Rancho Milagro | 77 FR 49453; August 16, 2012 | October 22, 2012. |
| 030006 | Paul Bodnar | 77 FR 49453; August 16, 2012 | October 22, 2012. |
| 80856A | Boulder Ridge Ranch, LLC | 77 FR 49453; August 16, 2012 | October 22, 2012. |
| 81021A | Marc Cramer | 77 FR 49453; August 16, 2012 | October 22, 2012. |
| 671564 | Fort Wayne Zoological Society | 77 FR 49453; August 16, 2012 | October 22, 2012. |
| 80202A | Kyle Lange | 77 FR 49453; August 16, 2012 | October 22, 2012. |
| 33472A | Karl Mogensen | 77 FR 49453; August 16, 2012 | October 22, 2012. |
| 80510A | Joseph Patinio | 77 FR 49453; August 16, 2012 | October 22, 2012. |
| 80160A | Rancho Milagro | 77 FR 49453; August 16, 2012 | October 22, 2012. |

| Permit No. | Applicant | Receipt of application **Federal Register** notice | Permit issuance date |
|---|---|---|---|
| 128506 | Robert Scott | 77 FR 49453; August 16, 2012 | October 22, 2012. |
| 793116 | Nancy Speed | 77 FR 49453; August 16, 2012 | October 22, 2012. |
| 680317 | Louisville Zoological Garden | 77 FR 51819; August 27, 2012 | October 22, 2012. |
| 79430A | Bamberger Ranch Preserve | 77 FR 51819; August 27, 2012 | October 22, 2012. |
| 79777A | Harkey Ranch Enterprises, LLC | 77 FR 51819; August 27, 2012 | October 22, 2012. |
| 81003A | Erik Lacy | 77 FR 51819; August 27, 2012 | October 22, 2012. |
| 74561A | Donald Palmerino | 77 FR 51819; August 27, 2012 | October 22, 2012. |
| 81783A | La Coma The Red Gate Corporation | 77 FR 51819; August 27, 2012 | October 23, 2012. |
| 81329A | Squaw Mountain Ranch Outfitters | 77 FR 51819; August 27, 2012 | October 23, 2012. |
| 81673A | Tipurtu South Texas Investments, Ltd | 77 FR 51819; August 27, 2012 | October 23, 2012. |
| 81782A | La Coma The Red Gate Corporation | 77 FR 51819; August 27, 2012 | October 23, 2012. |
| 81327A | Squaw Mountain Ranch Outfitters | 77 FR 51819; August 27, 2012 | October 23, 2012. |
| 81674A | Tipurtu South Texas Investments, Ltd | 77 FR 51819; August 27, 2012 | October 23, 2012. |
| 81039A | Glades Herp, Inc | 77 FR 51819; August 27, 2012 | October 25, 2012. |
| 81903A | Melissa White | 77 FR 51819; August 27, 2012 | October 25, 2012. |
| 165748 | Valerie Holt | 77 FR 51819; August 27, 2012 | October 31, 2012. |
| 691441 | Jackson Zoological Society, Inc | 77 FR 51819; August 27, 2012 | October 31, 2012. |
| 82656A | Ryan Mcdonald | 77 FR 51819; August 27, 2012 | October 31, 2012. |
| 704654 | Scovill Zoo | 77 FR 51819; August 27, 2012 | October 31, 2012. |
| 81326A | Gomez Development LLC | 77 FR 51819; August 27, 2012 | November 2, 2012. |
| 81324A | Gomez Development LLC | 77 FR 51819; August 27, 2012 | November 2, 2012. |
| 77537A | Star S Ranch Inc | 77 FR 54604; September 5 2012 | October 18, 2012. |
| 77536A | Star S Ranch Inc | 77 FR 54604; September 5 2012 | October 19, 2012. |
| 81902A | Jim Beck | 77 FR 54604; September 5 2012 | October 23, 2012. |
| 81901A | Jim Beck | 77 FR 54604; September 5 2012 | October 23, 2012. |
| 83160A | Elizabeth Lyons Trust | 77 FR 54604; September 5 2012 | October 31, 2012. |
| 82897A | Whitetail Junction Ranch | 77 FR 54604; September 5 2012 | October 31, 2012. |
| 83159A | Elizabeth Lyons Trust | 77 FR 54604; September 5 2012 | October 31, 2012. |
| 220871 | Lawrence Lerner | 77 FR 54604; September 5 2012 | October 31, 2012. |
| 82527A | Whitetail Junction Ranch | 77 FR 54604; September 5 2012 | October 31, 2012. |
| 63872A | Bar H Bar Land & Cattle Company | 77 FR 61627; October 10, 2012 | November 15, 2012. |
| 83021A | La Coma Ranch, Inc | 77 FR 61627; October 10, 2012 | November 15, 2012. |
| 63871A | Bar H Bar Land & Cattle Company | 77 FR 61627; October 10, 2012 | November 15, 2012. |
| 83017A | K & R Ranch | 77 FR 61627; October 10, 2012 | November 15, 2012. |
| 81989A | La Coma Ranch, Inc | 77 FR 61627; October 10, 2012 | November 15, 2012. |
| 85525A | Burmont, Inc | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 85528A | Ronald Rains | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 83802A | Simon Ranch LLC | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 84250A | Burmont, Inc | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 681252 | Cincinnati Zoo & Botanical Garden | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 679042 | Duke Lemur Center | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 140165 | Loewengruber, Kevin Gerard | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 19818A | Phoenix Herpetological Society, Inc | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 85530A | Ronald Rains | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 83803A | Simon Ranch LLC | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 819063 | Tautphaus Park Zoo | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 227200 | Kirk Thor | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 668695 | Woodland Park Zoological Gardens | 77 FR 61627; October 10, 2012 | November 16, 2012. |
| 89186A | Larry Johnson | 78 FR7447; February 1, 2013 | April 22, 2013. |
| 76114A | Cincinnati Zoo and Botanical Garden | 78 FR 12778; February 25, 2013 | May 20, 2013. |
| 96521A | Cincinnati Zoo and Botanical Garden | 78 FR 12778; February 25, 2013 | May 20, 2013. |
| 97266A | Miami-Dade Zoological Park and Gardens | 78 FR 17711; March 22, 2013 | May 23, 2013. |
| 022747 | Wade Harrell, Whooping Crane Coordinator, U.S. Fish Wildlife Service, Southwest Region. | 78 FR 23286; April 18, 2013 | May 21, 2013. |
| | **Marine Mammals** | | |
| 166772 | University of Utah/The Natural History Museum of Utah. | 78 FR 19731; April 2, 2013 | May 22, 2013. |

**Availability of Documents**

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280.

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2013–13406 Filed 6–5–13; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–12934; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Dallas Water Utilities, Dallas, TX

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Dallas Water Utilities has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Dallas Water Utilities. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Dallas Water Utilities at the address in this notice by July 8, 2013.

**ADDRESSES:** Terry Hodgins, 405 Long Creek Road, Sunnyvale, TX 75182, telephone (214) 670–8658, email *terry.hodgins@dallascityhall.com.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Dallas Water Utilities, Dallas, TX. The human remains and associated funerary objects were removed from Lake Ray Hubbard, Dallas, TX.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and dart points. The National Park Service is not responsible for the determinations in this notice.

## Consultation

A detailed assessment of the human remains and associated funerary objects was made by AR Consultants, Inc. and Dallas Water Utilities professional staff in consultation with representatives of the Caddo Nation of Oklahoma; Comanche Nation, Oklahoma; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Tonkawa Tribe of Indians of Oklahoma; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakoni).

## History and Description of the Remains

On September 22, 2011, human remains representing, at minimum, four individuals were removed from Lake Ray Hubbard in Dallas County, TX. The remains were exposed due to low lake levels resulting from a drought. Human skeletal remains and seven dart points were found near the area of an archaeological site 41DL8. The fisherman that found the remains reported their presence to the local police department. The Dallas Homicide Squad and a representative from the Dallas Medical Examiner's Office exhumed the remains. Initially determined to be animal remains, the exhumed skeletal elements were taken to the Medical Examiner's Office for identification, where they were determined to be human. Upon determination that the skeletal elements were human, Dallas Homicide and the Medical Examiner's representative returned to the scene and continued the exhumation until a dart point was encountered. Consultant Mark Ingraham, from the University of North Texas, removed additional remains from the site. Dallas Water Utilities contracted with AR Consultants, Inc. to complete the recovery of all bone fragments from the discovery site and insure that no further burials were in the immediate vicinity. AR Consultants, Inc. completed excavations and surveyed the shoreline to explore for the presence of any additional remains.

Analysis of the human remains and associated funerary objects by AR Consultants, Inc. indicates that the remains are of Native American ancestry. Radiocarbon dating of the bone attributes the burials to the early Late Archaic Period, between 1380–1130 B.C. and 1120–930 B.C. Radiocarbon dating of two femora from separate individuals occurred with permission of the Wichita and Affiliated Tribes. Skeletal analysis showed that a minimum of four male individuals were present. All four males were interred in a single burial pit. The skeletal investigation determined the males were between 35–45 years old at the time of death. No known individuals were identified. The seven associated funerary objects are dart points removed from the burial pit. The points were inspected by several authorities on Texas lithics, and they concluded that the dart points probably date to the early Late Archaic, although a type could not be specified. The assemblage included two dart points made of Ogalalla quartzite, four of Edwards chert, and one of Johns Valley chert.

Based on archeological, historical, and other information, there is a relationship of shared group identity between these remains and associated funerary objects and the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakoni). Geographic affiliation is consistent with the historically documented territory of the Wichita and Affiliated Tribes and Caddo Nation. The associated funerary objects type is consistent with the Early Late Archaic when the site and area was occupied by the Wichita and Affiliated Tribes and the Caddo Nation. The Caddo Nation deferred all decisions regarding the human skeletal remains and associated funerary objects to the Wichita and Affiliated Tribes. Radiocarbon dates, obtained with permission from the Wichita and Affiliated Tribes, of two femora dated to BC 1310–1000.

## Determinations Made by the Dallas Water Utilities

Officials of the Dallas Water Utilities and AR Consultants, Inc. have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the seven objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakoni). The Caddo Nation of Oklahoma has deferred to the Wichita and Affiliated Tribes.

## Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of

the request to Terry Hodgins, 405 Long Creek Road, Sunnyvale, TX 75182, telephone (214) 670–8658, email *terry.hodgins@dallascityhall.com,* by July 8, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Wichita and Affiliated Tribes may proceed.

The Dallas Water Utilities is responsible for notifying the Caddo Nation of Oklahoma and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakoni) that this notice has been published.

Dated: April 26, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–13466 Filed 6–5–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–12963; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: San Francisco State University NAGPRA Program, San Francisco, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The San Francisco State University NAGPRA Program has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the San Francisco State University NAGPRA Program. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the San Francisco State University NAGPRA Program at the address in this notice by July 8, 2013.

**ADDRESSES:** Jeffrey Boland Fentress, San Francisco State University NAGPRA Program, c/o Department of Anthropology, San Francisco State University, 1600 Holloway Avenue, San Francisco, CA 94132, telephone (415) 338–3075.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the San Francisco State University NAGPRA Program. The human remains and associated funerary objects were removed from site CA–PLA–9 in Placer County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the San Francisco State University NAGPRA Program professional staff in consultation with representatives of the United Auburn Indian Community of the Auburn Rancheria of California.

#### History and Description of the Remains

In 1964, human remains representing, at minimum, one individual were removed from site CA–PLA–9 in Placer County, CA, by San Francisco State University personnel in conjunction with construction activities for the Middle Fork American River Project. Site materials from the Middle Fork American River Project were curated at San Francisco State University after excavation and surface collection. No known individuals were identified. The one associated funerary object is a basalt projectile point.

The age of site CA–PLA–9 is unknown, but the site is located within the historically documented territory of the Southern Maidu/Nisenan people. The projectile point may be associated with the Martis Culture (ca. 1050 B.C.–A.D. 450) which may be considered ancestral to the Maidu people. Oral history evidence presented during consultation indicates that the area has been continuously occupied by the Southern Maidu/Nisenan since the contact period and that there is a cultural affiliation between the United Auburn Indian Community of the Auburn Rancheria of California and the ancestral Southern Maidu/Nisenan people.

#### Determinations Made by the San Francisco State University NAGPRA Program

Officials of the San Francisco State University NAGPRA Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the United Auburn Indian Community of the Auburn Rancheria of California.

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jeffrey Boland Fentress, San Francisco State University NAGPRA Program, c/o Department of Anthropology, San Francisco State University, 1600 Holloway Avenue, San Francisco, CA 94132, telephone (415) 338–3075, by July 8, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the United Auburn Indian Community of the Auburn Rancheria of California may proceed.

The San Francisco State University NAGPRA Program is responsible for notifying the United Auburn Indian Community of the Auburn Rancheria of California that this notice has been published.

Dated: April 30, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–13467 Filed 6–5–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–12994; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Michigan Department of Transportation, Van Wagoner Building, Lansing, MI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Michigan Department of Transportation has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Michigan Department of Transportation. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Michigan Department of Transportation at the address in this notice by July 8, 2013.

**ADDRESSES:** James A. Robertson, Staff Archaeologist, Environmental Section, Bureau of Highway Development, Michigan Department of Transportation, 425 West Ottawa, P.O. Box 30150, Lansing, MI 48909, telephone (517) 335–2637, email *robertsonj3@michigan.gov*.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Michigan Department of Transportation, Lansing, MI. The human remains and associated funerary objects were removed from the City of Rochester, Oakland County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains was made by the Michigan Department of Transportation professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and Sault Ste. Marie Tribe of Chippewa Indians of Michigan. Information was also provided to the Burt Lake Band of Ottawa & Chippewa Indians, Michigan, a non-Federally recognized Indian group.

Invitations to consultation were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band of Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Tribe of Oklahoma; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of the Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation. A request for consultation was also sent to the Grand River Bands of Ottawa Indians, Michigan, a non-Federally recognized Indian group. Lastly, the Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota, indicated that they did not wish to make a claim at this time and would support any tribe that may come forward.

#### History and Description of the Remains

In June through August of 2012, human remains representing, at minimum, four individuals were removed from site 20OK42 in the City of Rochester, Oakland County, MI. The human remains were inadvertently discovered during a road reconstruction project. The recovered human remains include one adult (>45 years) male, one adult (>45 years) female, one adolescent (13–17 years) female, and one neonate. All of the human remains were identified as Native American by the Michigan State University Forensic Anthropology Laboratory (MSUFAL) via non-invasive forensic analysis of the human remains and by the Michigan Department of Transportation's archaeological investigation of the depositional contexts of the human remains and associated funerary objects. No known individuals were identified. The 43 associated funerary objects are 28 chipped stone flakes, 2 edge-damaged flake tools, 1 bipolar chipped stone tool, 1 bifacial chipped stone tool, 1 hammerstone, 4 fire-cracked rocks, 1 calcined bone fragment, 2 fish scales, and 3 flotation heavy fractions.

#### Determinations Made by the Michigan Department of Transportation

Officials of the Michigan Department of Transportation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice

are Native American based on a combination of non-invasive forensic analysis and archaeological investigation.

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the 43 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.

• According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Saginaw Chippewa Indian Tribe of Michigan.

• Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of the Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation (hereafter referred to as ''The Tribes'').

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Tribes.

**Additional Requestors and Disposition**

Representatives of any Indian tribe not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to James A. Robertson, Staff Archaeologist, Environmental Section, Bureau of Highway Development, Michigan Department of Transportation, 425 West Ottawa, P.O. Box 30150, Lansing, MI 48909, telephone (517) 335–2637, email *robertsonj3@michigan.gov,* by July 8, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Michigan Department of Transportation is responsible for notifying The Tribes that this notice has been published.

Dated: May 2, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–13468 Filed 6–5–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13011; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, San Juan National Forest, Durango, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture (USDA), Forest Service, San Juan National Forest has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the San Juan National Forest. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the San Juan National Forest at the address in this notice by July 8, 2013.

**ADDRESSES:** Julie Coleman, Heritage Program Manager, San Juan National Forest, 15 Burnett Court, Durango, CO 81301, telephone (970) 385–1250, email *jacoleman@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the USDA Forest Service, San Juan National Forest, Durango, CO. The human remains and associated funerary objects were removed from lands managed by the USDA Forest Service in LaPlata County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains and associated funerary objects was made by the USDA Forest Service; Peabody Museum of Archaeology and Ethnology at Harvard University; University of Colorado Museum of Natural History, Boulder; Fort Lewis College; and Mesa Verde National Park professional staffs, along with a team of research consultants, in consultation with representatives of the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico.

**History and Description of the Remains**

Between 1937 and 1938, human remains representing, at minimum, 49 individuals were removed from the Falls Creek Rock Shelters (site 5LP1434), in Animas Valley, north of Durango, in LaPlata County, CO. In 1937, I. F. ''Zeke'' Flora conducted excavations without a permit in the burial crevice of the Falls Creek Rock Shelters, on lands managed by the USDA Forest Service. In 1938, Earl Morris, Department of Archaeology, The Carnegie Institution, conducted excavations in the north and south cave shelters of Falls Creek Rock Shelters, under permit by the USDA. In addition to the human remains and associated funerary objects described in this notice, unassociated funerary objects were removed from the burial crevice and north cave shelter and are the subject of a separate Notice of Intent to Repatriate Cultural Items published in the **Federal Register**.

A portion of the Flora collection at the Falls Creek Rock Shelters was housed at the Durango Public Library, Durango, CO. In 1945, it was transferred into the custody of the Mesa Verde National Park at the request of the Forest Service. Flora transferred additional items he collected at the Falls Creek Rock Shelters into the custody of the Mesa Verde National Park between 1962 and 1963. In November 2009, Mesa Verde National Park transferred these items to the Anasazi Heritage Center in Dolores, CO, where they are currently located. Additionally, in 1999, USDA Forest Service Law Enforcement seized a hide robe from Flora's daughter that had been collected by Flora at the Falls Creek Rock Shelters. Subsequently, in 2009, Bureau of Land Management Law Enforcement seized items in the custody of Vern Crites of Durango, CO, that were removed by Flora in 1937 at the Falls Creek Rock Shelters. Finally, in 2011, the Center for Southwest Studies, Fort Lewis College, transferred to the Anasazi Heritage Center a necklace that had been excavated by Flora at the Falls Creek Rock Shelters and given to Fort Lewis College by Helen Sloan Daniels.

The Morris collection at the Falls Creek Rock Shelters, as well as a portion of the Flora collection from the site purchased by Morris for The Carnegie Institution, was curated by the Peabody Museum of Archaeology and Ethnology at Harvard University, Cambridge, MA, and by the University of Colorado Museum of Natural History, Boulder, CO. In February 2009, these items were transferred into the custody of the Anasazi Heritage Center in Dolores, CO. Between February 2009 and March 2013, a team of researchers at the Anasazi Heritage Center conducted an intensive non-destructive analysis of the all of the items collected by Morris and Flora at the Falls Creek Rock Shelters. This effort allowed researchers to re-associate human remains and funerary objects that had been separated and curated at different places, and to determine the unassociated funerary objects in the collection.

The human remains representing, at minimum, 49 individuals from the Falls Creek Rock Shelters include: 29 individuals from the burial crevice (individuals 1–21, and 37–44); 16 individuals from the north cave shelter (individuals 22–30, 32–36, 45 and 46); 2 individuals from the south cave shelter (individuals 31 and 47); and 2 lots of commingled, disarticulated human remains that could not be re-associated with specific individuals. No known individuals were identified. The 1,202 associated funerary objects include: 13 woven textiles (aprons, rabbit fur blankets, twined yucca bags, yucca bands, braided rabbit hair sashes); 8 baskets; 33 pieces of cordage made from human hair, yucca, and hide; 18 hide artifacts (including 2 hide wrappings); 3 mammal fur tufts; 4 stone artifacts; 2 bone artifacts; 7 plant materials (including 2 juniper bark burial coverings); 460 stone beads; 470 shell beads; 2 bone beads; 176 juniper seed beads; and 4 shell ornaments. The stone, shell, bone, juniper seed beads, and shell ornaments are from 9 separate necklaces.

The Falls Creek Rock Shelters have been identified as a Basketmaker II habitation site, with the main occupation occurring between 300 B.C. and A.D. 400, based upon tree-ring dates. Archaeological, biological, and geographic evidence, along with oral traditions, indicate that the Basketmaker II populations of the Durango/Upper Animas District, in southwest Colorado, are culturally affiliated with the modern Puebloan people (Coleman 2013: 12). This includes the modern day tribes of the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

This determination is based upon the extensive review of currently available published and unpublished sources and information provided by Indian tribes during consultations. Archaeological evidence consists of chronological data, artifacts, and rock art. Recent DNA research also demonstrates a biological affiliation between Basketmaker II populations and modern Puebloans. Hopi and Zuni oral traditions provide additional information, including geographic evidence, for cultural affiliation between Basketmaker II and the present day Puebloan people.

**Determinations made by the USDA Forest Service, San Juan National Forest**

Officials of the San Juan National Forest have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 49 individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), there are 1,202 objects that are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects and The Tribes.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Julie Coleman, Heritage Program Manager, San Juan National Forest, 15 Burnett Court, Durango, CO 81301, telephone (970) 385–1250, email *jacoleman@fs.fed.us*, by July 8, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The San Juan National Forest is responsible for notifying the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: May 6, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–13460 Filed 6–5–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–12964; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Coachella Valley History Museum, Indio, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Coachella Valley History Museum has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Coachella Valley History Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Coachella Valley History Museum at the address in this notice by July 8, 2013.

**ADDRESSES:** Erica M. Ward, Coachella Valley History Museum, 82–616 Miles Avenue, Indio, CA 92201, telephone (760) 342–6651, email *erica@cvhm.org*.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Coachella Valley History Museum, Indio, CA. The human remains and associated funerary objects were removed from Salton Sea area, Imperial County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the Coachella Valley History Museum professional staff in consultation with representatives of Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California).

**History and Description of the Remains**

Sometime between 1930 and 1945, human remains representing, at minimum, four individuals were removed from the Salton Sea area in Imperial County, CA, by Mr. and Mrs. Homer Sherrod. In 1984, Mr. and Mrs. Homer Sherrod donated a large collection of items, including the human remains and associated funerary objects, to the Coachella Valley Historical Society. No known individuals were identified. The four associated funerary objects include 1 lot of charred animal bones, 1 lot of multiple pieces of charred basketry, 1 lot of multiple pieces of charred beads, and 1 lot of multiple pieces of charred cordage and charred residue.

The human remains and associated funerary items have been determined to be prehistoric. Based on a geographic affiliation and consultation, the Coachella Valley History Museum has determined a cultural affiliation between these human remains and associated funerary objects and the Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California).

**Determinations Made by the Coachella Valley History Museum**

Officials of the Coachella Valley History Museum have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice

represent the physical remains of four individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California).

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Erica M. Ward, Coachella Valley History Museum, 82–616 Miles Avenue, Indio, CA 92201, telephone (760) 342–6651, email *erica@cvhm.org,* by July 8, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California) may proceed.

The Coachella Valley History Museum is responsible for notifying the Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California) that this notice has been published.

Dated: April 30, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–13469 Filed 6–5–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13012; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Department of Agriculture, U.S. Forest Service, San Juan National Forest, Durango, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture (USDA), Forest Service, San Juan National Forest has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to San Juan National Forest. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the San Juan National Forest at the address in this notice by July 8, 2013.

**ADDRESSES:** Julie Coleman, Heritage Program Manager, San Juan National Forest, 15 Burnett Court, Durango, CO 81301, telephone (970) 385–1250, email *jacoleman@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the USDA Forest Service, San Juan National Forest, Durango, CO. The human remains were removed from lands managed by the USDA Forest Service in La Plata County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

**Consultation**

A detailed assessment of the human remains was made by the USDA Forest Service and the National Park Service professional staff, along with a team of research consultants, in consultation with representatives of the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico.

**History and description of the remains**

Prior to 1962, human remains representing, at minimum, three individuals were removed from an unknown site or sites in the Falls Creek cave area, north of Durango, in LaPlata County, CO. The human remains were included with collection materials from the Falls Creek Rock Shelters (site 5LP1434) and in the custody of the Mesa Verde National Park. In 2009, Mesa Verde National Park transferred these remains to the San Juan National Forest. Detailed assessment of the accompanying documentation and analysis of the human remains determined that these remains are not part of the collections from the Falls Creek Rock Shelters and that they were donated to Mesa Verde National Park in 1962 from the Durango Public Library in Durango, CO. Provenience information is designated as the ''Falls Creek Cave Area.'' The remains include a complete skull of a young adult male, 20–34 years of age; a skull of an adult male, 35–49 years of age; and a skull of an adult male, 35–49 years of age. All three of the skulls exhibit some reconstruction and remnants of modifications made for purposes of display. No known individuals were identified. No associated funerary objects are present.

Analysis of the human remains by Mesa Verde National Park staff concluded that they were Ancestral Puebloan dating to the ''Basketmaker'' period. A subsequent review and reassessment of all available documentation and the human remains concurs with the Mesa Verde National

Park analysis conclusion of an Ancestral Puebloan cultural affiliation, likely dating from between the Basketmaker III and Pueblo I time periods (A.D. 500–A.D. 900), which is consistent with prehistoric settlement and occupation of this geographic area.

**Determinations made by the USDA Forest Service, San Juan National Forest**

Officials of the San Juan National Forest have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains to the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Julie Coleman, Heritage Program Manager, San Juan National Forest, 15 Burnett Court, Durango, CO 81301, telephone (970) 385–1250, email *jacoleman@fs.fed.us,* by July 8, 2013. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The San Juan National Forest is responsible for notifying of the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: May 6, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–13462 Filed 6–5–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13042; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: University of Michigan, Museum of Anthropology, Ann Arbor, MI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The University of Michigan, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the University of Michigan. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the University of Michigan at the address in this notice by July 8, 2013.

**ADDRESSES:** Dr. Ben Secunda, NAGPRA Project Manager, Office of the Vice President for Research, 4080 Fleming Building, University of Michigan, 503 S. Thompson St., Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the University of Michigan that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Item(s)**

Prior to 1924, 15 cultural items were removed from graves in the areas of Middle Village, Cross Village, and other locations in Emmet County, MI. In 1924, these items were sold to the University of Michigan, Museum of Anthropology, by Rev. L.P. Rowlands of Detroit, MI. Other unassociated funerary objects from this collection were previously listed in a Notice of Inventory Completion published in the **Federal Register** (62 FR 8265–8266, February 24, 1997). The 15 unassociated funerary objects are as follows: From Middle Village—6 pipestone square beads; from Cross Village—1 silver brooch; 1 iron axe; and 1 small oval wooden bowl; and from locations in Emmet County—2 silver fragments; 1 British military coat button; 1 small bundle of feathers, plant fibers, and metal pieces; 1 lot of red paint fragments in hide; and 1 textile fragment with small shell beads.

The areas of Cross Village and Middle Village are historic Odawa settlements, and the types of unassociated funerary objects are consistent with Odawa burials of the late seventeenth and eighteenth centuries. Consultation evidence presented by the Little Traverse Bay Bands of Odawa Indians, Michigan, supports the Odawa affiliation for these sites.

**Determinations Made by the University of Michigan**

• Pursuant to 25 U.S.C. 3001(3)(B), the 15 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Little Traverse Bay Bands of Odawa Indians, Michigan.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Dr. Ben Secunda, NAGPRA Project Manager, Office of the Vice President for Research, 4080 Fleming Building, University of Michigan, 503 S. Thompson St., Ann Arbor, MI 48109–1340, telephone (734) 647–9085, email *bsecunda@umich.edu* by July 8, 2013. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Little Traverse Bay Bands of Odawa Indians, Michigan, may proceed.

The University of Michigan is responsible for notifying the Little Traverse Bay Bands of Odawa Indians, Michigan, that this notice has been published.

Dated: May 8, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–13465 Filed 6–5–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–13041; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent to Repatriate Cultural Items: The Field Museum, Chicago, IL

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Field Museum, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Field Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Field Museum at the address in this notice by July 8, 2013.

**ADDRESSES:** Helen Robbins, Repatriation Director, Field Museum, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Field Museum, Chicago, IL, that meet the definition of unassociated funerary objects, under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Items**

In 1930, three cultural items were removed from the Queen Creek Ruin, also known as Sonoqui Pueblo, Pozos de Sonoqui, or Sun Temple Ruin (Sacaton:2:6 (GP)) in Maricopa County, AZ, during legally authorized excavations conducted by the Gila Pueblo Archaeological Foundation. The Field Museum acquired these items in 1940 as the result of an exchange with the Gila Pueblo Archaeological Foundation. The three unassociated funerary objects are two ceramic bowls and one ceramic scoop. Records indicate that the items were removed from three separate grave contexts, but the human remains are not present in Field Museum collections.

Queen Creek Ruin was a large habitation site that included trash mounds, burials, pithouses, canals, adobe compounds, and a ballcourt. Architectural features, mortuary practices, ceramic types, and other items of material culture at this ruin are consistent with the Hohokam archaeological tradition and indicate occupation between approximately A.D. 950 and 1450. Continuities of mortuary practices, ethnographic material, and technology indicate affiliation of Hohokam settlements with present-day O'odham (Piman) and Puebloan cultures.

On July 27, 2012, representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona, submitted an August 2000 cultural affiliation study that addresses continuities between the Hohokam and the O'odham tribes. Furthermore, oral traditions that are documented for the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona support affiliation with Hohokam sites in central Arizona. The aforementioned tribes have designated the Gila River Indian Community to take the lead on repatriations from the Queen Creek Site.

**Determinations Made by the Field Museum**

Officials at the Field Museum have determined that*:*

• Pursuant to 25 U.S.C. 3001(3)(B), the three cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Helen Robbins, Repatriation Director, Field Museum, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org,* by July 8, 2013. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Gila River Indian Community of the Gila River Indian Reservation may proceed.

The Field Museum is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona that this notice has been published.

Dated: May 8, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–13463 Filed 6–5–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–13010; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Intent To Repatriate Cultural Items: U.S. Department of Agriculture, Forest Service, San Juan National Forest, Durango, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture (USDA), Forest Service, San Juan National Forest, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the San Juan National Forest. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the San Juan National Forest at the address in this notice by July 8, 2013.

**ADDRESSES:** Julie Coleman, Heritage Program Manager, San Juan National Forest, 15 Burnett Court, Durango, CO 81301, telephone (970) 385–1250, email *jacoleman@fs.fed.us*.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the USDA Forest Service, San Juan National Forest, Durango, CO, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Items**

Between 1937 and 1938, 190 unassociated funerary objects were removed from the burial crevice and north cave shelter of the Falls Creek Rock Shelters (site 5LP1434), in Animas Valley, north of Durango, in LaPlata County, CO. In 1937, I. F. ''Zeke'' Flora conducted excavations without a permit in the burial crevice of Falls Creek Rock Shelters, on lands managed by the USDA Forest Service. In 1938, Earl Morris, Department of Archaeology, The Carnegie Institution, conducted excavations in the north and south cave shelters of Falls Creek Rock Shelters, under permit by the USDA. Flora and Morris both collected human remains and associated funerary objects, which are the subject of a separate Notice of Inventory Completion published in the **Federal Register**.

A portion of the Flora collection at the Falls Creek Rock Shelters was housed at the Durango Public Library, Durango, CO. In 1945, it was transferred into the custody of the Mesa Verde National Park at the request of the Forest Service. Flora transferred additional items he collected at the Falls Creek Rock Shelters into the custody of the Mesa Verde National Park between 1962 and 1963. In November 2009, Mesa Verde National Park transferred these items to the Anasazi Heritage Center in Dolores, CO, where they are currently located. Additionally, in 1999, USDA Forest Service Law Enforcement seized a hide robe from Flora's daughter that had been collected by Flora at the Falls Creek Rock Shelters. Subsequently, in 2009, Bureau of Land Management Law Enforcement seized items in the custody of Vern Crites of Durango, CO, that were removed by Flora in 1937 at the Falls Creek Rock Shelters. Finally, in 2011, the Center for Southwest Studies, Fort Lewis College, transferred to the Anasazi Heritage Center a necklace that had been excavated by Flora at the Falls Creek Rock Shelters and given to Fort Lewis College by Helen Sloan Daniels.

The Morris collection at the Falls Creek Rock Shelters, as well as a portion of the Flora collection from the site purchased by Morris for The Carnegie Institution, was curated by the Peabody Museum of Archaeology and Ethnology at Harvard University, Cambridge, MA, and by the University of Colorado Museum of Natural History, Boulder, CO. In February 2009, these items were transferred into the custody of the Anasazi Heritage Center in Dolores, CO. Between February 2009 and March 2013, a team of researchers at the Anasazi Heritage Center conducted an intensive non-destructive analysis of the all of the items collected by Morris and Flora at the Falls Creek Rock Shelters. This effort allowed researchers to re-associate human remains and funerary objects that had been separated and curated at different places, and to determine the unassociated funerary objects in the collection.

In all, 190 objects are determined to be unassociated funerary objects from the Falls Creek Rock Shelters, including 188 objects from the burial crevice and 2 objects from the burial trench in the north cave shelter. The 188 objects from the burial crevice are 6 hide artifacts; 1 deer hair; 8 twined mats (all vegetal materials); 3 twined blankets (human and animal hair, yucca, hide, bark, and feathers); 12 plant fiber bundles; 10 vegetal seeds, rind, and stem; 7 maize cobs; 3 maize kernels; 18 pieces of cordage (includes human hair, yucca, and dog); 2 bullrush braids; 10 textiles (yucca, feathers, rabbit hair, and hide); 3 twined bags (yucca); 10 baskets; 1 bark slab; 1 cradleboard (oak/willow frame, sumac rods, and sinew wrap); 4 wrapped sticks (twigs wrapped with sinew and turkey feather quills); 1 hide sandal; 10 yucca sandals; 1 wood Atlatl fragment; 1 piece of worked wood; 1

wood awl; 1 hafted stone drill; 1 stone drill fragment; 1 chert scraper; 22 pieces of flaked stone (debitage, bifaces whole and fragments); 1 piece of mineral; 5 deer mandible ornaments; 1 bone ornament; 3 bone awls; 1 whole shell (Orehelix); 2 juniper seed beads; 2 miscellaneous beads (unidentified material); 1 lignite bead; 4 shell beads or pendants; 1 pendant (unidentified material); a necklace containing 5 Olivella beads, 1 lignite pendant, and hide cordage; and a necklace containing 1 Olivella dama bead, 1 Olivella biplicata bead, 1 Olivella spicata bead, 18 juniper seed beads, and yucca cordage. The 2 objects from the burial trench in the north cave shelter are: 1 chalcedony dart point, medial fragment, and 1 chert dart point, distal fragment.

The Falls Creek Rock Shelters have been identified as a Basketmaker II habitation site, with the main occupation occurring between 300 B.C. and A.D. 400, based upon tree-ring dates. Archaeological, biological, and geographic evidence, along with oral traditions, indicate that the Basketmaker II populations of the Durango/Upper Animas District, in southwest Colorado, are culturally affiliated with the modern Puebloan people (Coleman 2013: 12). This includes the modern day tribes of the Hopi Tribe of Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

This determination is based upon the extensive review of currently available published and unpublished sources and information provided by Indian tribes during consultations. Archaeological evidence consists of chronological data, artifacts, and rock art. Recent DNA research also demonstrates a biological affiliation between Basketmaker II populations and modern Puebloans. Hopi and Zuni oral traditions provide additional information, including geographic evidence, for cultural affiliation between Basketmaker II and the present day Puebloan people.

**Determinations Made by the USDA Forest Service, San Juan National Forest**

Officials of the San Juan National Forest have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 190 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and The Tribes.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Julie Coleman, Heritage Program Manager, San Juan National Forest, 15 Burnett Court, Durango, CO 81301, telephone (970) 385–1250, email *jacoleman@fs.fed.us,* by July 8, 2013. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to The Tribes may proceed.

The San Juan National Forest is responsible for notifying the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico, that this notice has been published.

Dated: May 6, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–13461 Filed 6–5–13; 8:45 am]

**BILLING CODE 4312–50–P**

## INTERNATIONAL TRADE COMMISSION

**[Docket No 2958]**

### Certain Portable Electronic Communications Devices, Including Mobile Phones and Components Thereof; Correction to Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Correction is made to named-respondent HTC Corporation of Taiwan.

**SUPPLEMENTARY INFORMATION:** The U.S. International Trade Commission published a notice (78 FR 12892, May 31, 2013) of receipt of complaint entitled *Certain Portable Electronic Communications Devices, Including Mobile Phones and Components Thereof,* DN 2958; the Commission solicited comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)). The complaint named as respondents HTC Corporation of Taiwan and HTC America, Inc. of Bellevue, WA.

Issued: June 3, 2013.

By order of the Commission.

**William R. Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2013–13385 Filed 6–5–13; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On May 30, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Columbia in the lawsuit entitled *United States* v. *Tesoro Corporation,* Civil Action No. 1:10–cv–00211 (JEB).

The United States filed this lawsuit under the Clean Air Act against

Defendants Tesoro Corporation, Tesoro Refining and Marketing Company, and Tesoro Alaska Company. The United States' complaint seeks injunctive relief and civil penalties for violations of Clean Air Act, Title II, Section 211(b), (c), (d), and (k), 42 U.S.C. 7545(b), (c), (d), & (k), and the regulations promulgated thereunder published at 40 CFR Part 80. The violations are alleged to have occurred at refineries producing conventional gasoline owned and operated by Defendants and located in Salt Lake City, Utah; Mandan, North Dakota; Anacortes, Washington; and Kenai, Alaska. The consent decree requires the Defendants to perform injunctive relief and pay a $1,100,000 civil penalty.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Tesoro Corporation,* D.J. Ref. No. 90–5–2–1–09622. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By e-mail | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.25 (25 cents per page reproduction cost) payable to the United States Treasury.

**Maureen M. Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2013–13428 Filed 6–5–13; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Class Exemption 80–83, Sale of Securities to Reduce Indebtedness of Party in Interest

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Prohibited Transaction Class Exemption 80–83, Sale of Securities to Reduce Indebtedness of Party in Interest,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

**DATES:** Submit comments on or before July 8, 2013.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201305-1210-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** Prohibited Transaction Class Exemption 80–83, Sale of Securities to Reduce Indebtedness of Party in Interest, allows an employee benefit plan to purchase securities that may aid the issuer of the securities to reduce or retire indebtedness to a party in interest. Without the relief provided by the class exemption, Employee Retirement Income Security Act prohibited transaction provisions would bar a standard type of financial/business transaction between a financial service provider and an employee benefit plan. This exemption also provides relief from Internal Revenue Code section 4975 prohibited transaction provisions.

In order to take advantage of the relief provided by this class exemption, an employee benefit plan must comply with all applicable exemption conditions, including keeping records sufficient to establish that exemption conditions have been met for exemption-covered transactions. The records must be maintained for a period of at least six years from a covered transaction and must be made reasonably available for inspection upon request by specified interested persons—including plan fiduciaries, participants and beneficiaries, sponsoring employers, DOL and Internal Revenue Service representatives, and contributing employers. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 27, 2013 (77 FR 70828).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0064.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on May 31, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing

requirements. It should also be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0064. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL–EBSA.

*Title of Collection:* Prohibited Transaction Class Exemption 80–83, Sale of Securities to Reduce Indebtedness of Party in Interest.

*OMB Control Number:* 1210–0064.

*Affected Public:* Private sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 25.

*Total Estimated Number of Responses:* 25.

*Total Estimated Annual Burden Hours:* 15.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: May 20, 2013.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2013–13368 Filed 6–5–13; 8:45 am]

**BILLING CODE 4510–29–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2013–0088]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the Federal Register under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Title 10 CFR Part 95—Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.

2. *Current OMB approval number:* 3150–0047.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* NRC-regulated facilities and their contractors who require access to and possession of NRC classified information.

5. *The number of annual respondents:* 10.

6. *The number of hours needed annually to complete the requirement or request:* 968 hours (816 hours reporting and 152 hours recordkeeping).

7. *Abstract:* NRC-regulated facilities and their contractors who are authorized to possess classified matter are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC classified information and material.

Submit, by August 5, 2013, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied, for a fee, publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*.

Documents will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0088.

You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0088. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 3rd day of June, 2013.

For the U.S. Nuclear Regulatory Commission.

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2013–13402 Filed 6–5–13; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. NRC–2013–0108]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* The Office of Federal and State Materials and Environmental Management Programs Requests to Agreement States for Information.

2. *Current OMB approval number:* 3150–0029.

3. *How often the collection is required:* One-time or as-needed.

4. *Who is required or asked to report:* Thirty-seven Agreement States who have signed Section 274(b) Agreements with the NRC.

5. *The number of annual respondents:* 37.

6. *The number of hours needed annually to complete the requirement or request:* 3,690.

7. *Abstract:* The Agreement States are asked on a one-time or as-needed basis to respond to a specific incident, to gather information on licensing and inspection practices or other technical and training-related information. In 2007, the NRC policy changed to begin funding training for Agreement State materials licensing and inspection staff and associated travel to attend courses offered through the NRC training program. The results of such information requests, which are authorized under Section 274(b) of the Atomic Energy Act, are utilized in part by the NRC in preparing responses to Congressional inquiries. The Agreement State comments are also solicited in the areas of proposed procedures, implementing guidance, and in the development of new and revised regulations and policies.

Submit, by August 5, 2013, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*.

The document will be available on the NRC's home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2013–0108.

You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2013–0108. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 31st day of May 2013.

For the Nuclear Regulatory Commission,

**Tremaine Donnell,**

*NRC Clearance Officer, Office of Information Services.*

[FR Doc. 2013–13392 Filed 6–5–13; 8:45 am]

**BILLING CODE 7590–01–P**

## RAILROAD RETIREMENT BOARD

### Sunshine Act Meetings; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 19, 2013, 2:00 p.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

*Portion open to the public:*

(1) Executive Committee Reports.

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312–751–4920.

Dated: June 3, 2013.

**Martha P. Rico,**

*Secretary to the Board.*

[FR Doc. 2013–13612 Filed 6–4–13; 4:15 pm]

**BILLING CODE 7905–01–P**

## RAILROAD RETIREMENT BOARD

### Sunshine Act Meetings; Notice of Closed Meeting

Notice is hereby given that the Railroad Retirement Board will hold a closed meeting on June 20, 2013, beginning at 9:00 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

*Closed meeting notice:*

(1) Chief Information Officer Position

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312–751–4920.

Dated: June 3, 2013.

**Martha P. Rico,**

*Secretary to the Board.*

[FR Doc. 2013–13613 Filed 6–4–13; 4:15 pm]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19b–5 and Form PILOT; SEC File No. 270–448; OMB Control No. 3235–0507.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19b–5 (17 CFR 240.19b–5) and Form PILOT (17 CFR 249.821) under the Securities Exchange Act of 1934, as amended (''Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 19b–5 provides a temporary exemption from the rule-filing requirements of Section 19(b) of the Act (15 U.S.C. 78s(b)) to self-regulatory organizations (''SROs'') wishing to establish and operate pilot trading systems. Rule 19b–5 permits an SRO to

develop a pilot trading system and to begin operation of such system shortly after submitting an initial report on Form PILOT to the Commission. During operation of any such pilot trading system, the SRO must submit quarterly reports of the system's operation to the Commission, as well as timely amendments describing any material changes to the system. After two years of operating such pilot trading system under the exemption afforded by Rule 19b–5, the SRO must submit a rule filing pursuant to Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) in order to obtain permanent approval of the pilot trading system from the Commission.

The collection of information is designed to allow the Commission to maintain an accurate record of all new pilot trading systems operated by SROs and to determine whether an SRO has properly availed itself of the exemption afforded by Rule 19b–5, is operating a pilot trading system in compliance with the Act, and is carrying out its statutory oversight obligations under the Act.

The respondents to the collection of information are national securities exchanges and national securities associations.

While there are 17 national securities exchanges and national securities associations that may avail themselves of the exemption under Rule 19b–5 and the use of Form PILOT, it is estimated that approximately three respondents will file a total of 3 initial reports, 12 quarterly reports, and 6 amendments on Form PILOT per year, with an estimated total annual response burden of 126 hours. At an average hourly cost of $350.07, the estimated aggregate related cost of compliance with Rule 19b–5 for all respondents is $44,109 per year (126 burden hours multiplied by $350.07/hour = $44,109).

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: May 31, 2013.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–13383 Filed 6–5–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69677; File No. SR–BX–2013–037]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options Fees and Rebates

May 31, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on May 24, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XV, Section 2 entitled ''BX Options Market—Fees and Rebates'' to amend rebates and fees relating to various options and make technical corrections to this section.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on June 3, 2013.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

BX proposes to amend Chapter XV, Section 2(1) to add Bank of America Corporation (''BAC'') to the list of options overlying certain penny pilot options (the others include IWM, QQQ and SPY, collectively with BAC, the ''Specified Penny Pilot Options''). Additionally, the Exchange proposes to amend certain fees and rebates for Customers and BX Options Market Makers [3] in the Specified Penny Pilot Options.

The Exchange proposes to increase the Rebate to Add Liquidity in the Specified Penny Pilot Options for BX Options Market Makers from $0.15 to $0.20 per executed contract. The Exchange also proposes to decrease the Fee to Add Liquidity in the Specified Penny Pilot Options for Customers and BX Options Market Makers from $0.18 to $0.10 per executed contract. Finally, the Exchange proposes to decrease the Rebate to Remove Liquidity in the Specified Penny Pilot Options for Customers from $0.12 to $0.00 per executed contract.

The proposed rule change will reflect the fees and rebates as follows:

[3] A BX Options Market Maker must be registered as such pursuant to Chapter VII, Section 2 of the BX Options Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

FEES AND REBATES
[Per executed contract]

| | Customer | BX Options market maker | Non-customer [1] |
|---|---|---|---|
| BAC, IWM, QQQ and SPY: | | | |
| Rebate to Add Liquidity | [2] $0.00 | [2] $0.20 | N/A |
| Fee to Add Liquidity | [3] 0.10 | [3] 0.10 | 0.45 |
| Rebate to Remove Liquidity | 0.00 | N/A | N/A |
| Fee to Remove Liquidity | N/A | 0.45 | 0.45 |
| All Other Penny Pilot Options: | | | |
| Rebate to Add Liquidity | [2] 0.00 | [2] 0.10 | N/A |
| Fee to Add Liquidity | [3] 0.40 | [3] 0.40 | 0.45 |
| Rebate to Remove Liquidity | 0.32 | N/A | N/A |
| Fee to Remove Liquidity | N/A | 0.45 | 0.45 |
| Non-Penny Pilot Options: | | | |
| Fee to Add Liquidity | [4] 0.25/0.85 | [4] 0.50/0.85 | 0.88 |
| Rebate to Remove Liquidity | 0.70 | N/A | N/A |
| Fee to Remove Liquidity | N/A | 0.88 | 0.88 |

The Exchange believes that the proposed amended fees and rebates for the Specified Penny Pilot Options, as well as including BAC to the list of Specified Penny Pilot Options, is competitive and will encourage BX members to transact business on the Exchange. Despite the reduction of the Customer Rebate to Remove Liquidity to $0.00, the Exchange believes that the increased Rebate to Add Liquidity for BX Options Market Makers coupled with the reduction of Fees to Add Liquidity for both Customers and BX Options Market Makers will enable the Exchange to remain competitive with other options exchanges by improving liquidity and that market participants will continue to send order flow to the Exchange.

2. Statutory Basis

BX believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls.

The Exchange believes that its proposal to include BAC in the list of Specified Penny Pilot Options and subject to the fees and rebates applicable thereto, is reasonable given the fact that certain symbols such as the Specified Penny Pilot Options are highly liquid as compared to other penny pilot options and pricing by symbol is not novel as other options exchanges differentiate pricing by security today.[6] The Exchange believes that its proposal to assess different fees and rebates for BAC (as is the case for the other Specified Penny Pilot Options) as compared to all other penny pilot options is equitable and not unfairly discriminatory as described hereafter.

The Exchange believes that for Specified Penny Pilot Options the proposed increase of the Rebate to Add Liquidity for BX Options Market Makers from $0.15 to $0.20 per executed contract (available only when they are contra to a Non-Customer or BX Options Marker Maker) along with the reduction in the Fee to Add Liquidity for both Customers and BX Options Market Makers from $0.18 to $0.10 per executed contract (available only when the Customer or BX Options Market Maker is contra to a Customer) is reasonable because these fee and rebate changes will help to attract order flow from BX Options Market Makers and Customers to the Exchange to the benefit of all market participants through increased liquidity.

The Exchange believes that increasing Specified Penny Pilot Options Rebate to Add Liquidity for BX Options Market Makers from $0.15 to $0.20 per executed contract and offering the rebate only to BX Options Market Makers is equitable and not unfairly discriminatory because BX Options Market Makers have obligations to the market and regulatory requirements,[7] which normally do not apply to other market participants. By continuing to incentivize BX Options Market Makers to add liquidity, by offering an increased rebate, will result in tighter markets and increased order interaction.

Specifically, with respect to the Fee to Add Liquidity, the Exchange believes that assessing Customers and BX Options Market Makers a lower Fee to Add Liquidity, when they are not contra to a Customer, as compared to Non-Customers is reasonable because the Exchange seeks to incentivize these critical market participants to add liquidity. Increased liquidity benefits all market participants. The Exchange also believes that the lower Fees to Add Liquidity for Customers and BX Options Market Makers as compared to Non-Customers are equitable and not unfairly discriminatory because Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange. Also, BX Options Market Makers have obligations to the market and regulatory requirements,[8] which normally do not apply to other market participants. A BX Options Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] *See* NASDAQ OMX PHLX LLC's Pricing Schedule, which has different pricing for its Select Symbols and different pricing for other Multiply Listed Options. *See also* the NASDAQ Options Market LLC at Chapter XV, Section 2(1), which distinguishes pricing for NDX and MNX. *See also* the International Securities Exchange LLC's Fee Schedule, which distinguishes pricing for Special Non-Select Penny Pilot Symbols. *See also* the Chicago Board Options Exchange, Incorporated's Fees Schedule, which distinguishes index products.

[7] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[8] *Id.*

maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course of dealings. The proposed differentiation as between Customers and BX Options Market Makers and Non-Customers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Customers and BX Options Market Makers, as well as the differing mix of orders entered.

The Exchange believes that for the Specified Penny Pilot Options the proposed reduction of the Customer Rebate to Remove Liquidity from $0.12 to $0.00 is reasonable because Customer orders will receive benefits in the form of increased liquidity and the $0.00 rate is the same rate that is assessed at other options exchanges.[9] The Exchange believes that for the Specified Penny Pilot Options the proposed reduction of the Customer Rebate to Remove Liquidity from $0.12 to $0.00 is equitable and not unfairly discriminatory because Customers would still be assessed the lowest rates with respect to Non-Customers on BX Options.

The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fee and rebate scheme discussed herein is competitive and similar to other fees and rebates in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, BX has designed its fees and rebates to compete effectively for the execution and routing of options contracts. The Exchange believes that the proposed amended fee/rebate pricing structure for the Specified Penny Pilot Options, including the addition of BAC to this list, would attract liquidity to and benefit order interaction at the Exchange to the benefit of all market participants.

Additionally, since the fees and rebates are comparable to those present at other options venues, the Exchange believes the proposals discussed herein do not pose a burden on competition amongst Exchange participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2013–037 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2013–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2013–037 and should be submitted on or before June 27, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–13391 Filed 6–5–13; 8:45 am]

**BILLING CODE 8011–01–P**

[9] *See also* the NYSE AMEX's Fees Schedule, which distinguishes index products.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 200.30–3(a)(12).

## STATE JUSTICE INSTITUTE

### SJI Board of Directors Meeting, Notice

**AGENCY:** State Justice Institute.

**ACTION:** Notice of Meeting.

**SUMMARY:** The SJI Board of Directors will be meeting on Monday, June 24, 2013 at 1:00 p.m. The meeting will be held at the Supreme Court of Connecticut in Hartford, Connecticut. The purpose of this meeting is to consider grant applications for the 3rd quarter of FY 2013, and other business. All portions of this meeting are open to the public.

**ADDRESSES:** Supreme Court of Connecticut, 231 Capitol Ave. Attorney's Conference Room, Main Level.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom

Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov.*

**Jonathan D. Mattiello,**

*Executive Director.*

[FR Doc. 2013–13390 Filed 6–5–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Aviation Rulemaking Advisory Committee (ARAC) meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the ARAC.

**DATES:** The meeting will be held on June 20, 2013, starting at 1:00 p.m. Eastern Standard Time. Arrange oral presentations by June 13, 2013.

**ADDRESSES:** The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, 8th floor, Conference Room 8 A/B/C.

**FOR FURTHER INFORMATION CONTACT:** Renee Butner, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–5093; fax (202) 267–5075; email *Renee.Butner@faa.gov*.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the ARAC taking place on June 20, 2012, at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. The Agenda includes:

1. Status Reports From Active Working Groups
   a. Airman Testing Standards and Training Working Group (ARAC)
   b. Flight Controls Harmonization Working Group (Transport Airplane and Engine Subcommittee [TAE])
   c. Airworthiness Assurance Working Group (TAE)
   d. Flight Test Harmonization Working Group (TAE)
2. New Tasks
   a. AC 120–17A Maintenance Control by Reliability Methods
3. Status Report from the FAA
   a. Rulemaking Prioritization Working Group (RPWG)

Attendance is open to the interested public but limited to the space available. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than June 13, 2013. Please provide the following information: full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen please indicate so.

For persons participating by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by June 13, 2013 to present oral statements at the meeting. The public may present written statements to the Aviation Rulemaking Advisory Committee by providing 25 copies to the Designated Federal Officer, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on May 31, 2013.

**Lirio Liu,**

*Designated Federal Officer, Aviation Rulemaking Advisory Committee.*

[FR Doc. 2013–13335 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2013–23]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before June 26, 2013.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2013–0189 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Theresa White, ANM–113, Standardization Branch, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057; email: *theresa.j.white@faa.gov;* (425) 227–2956; Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email: *andrea.copeland@faa.gov;* (202) 267–3664.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 23, 2013.

**Lirio Liu,**

*Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2013–0189.

*Petitioner:* AIRBUS.

*Section of 14 CFR Affected:* 25.813(e) at Amendment 46, 121.310(f)(5); and 121.310(f)(6).

*Description of Relief Sought:* Relief from the requirements of §§ 25.813(e) and 121.310(f)(5) & (6) of Title 14, Code of Federal Regulations (14 CFR) to allow the installation of four mini-suites with doors in the cabin of the AIRBUS Model A321 for Jet Blue Airlines, a U.S. operator.

[FR Doc. 2013–13336 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–1998–4334; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2003–14504; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2007–27333; FMCSA–2009–0086]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 25 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective June 26, 2013. Comments must be received on or before July 8, 2013.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [Docket No. FMCSA–1998–4334; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2003–14504; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2007–27333; FMCSA–2009–0086], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

**Exemption Decision**

This notice addresses 25 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 25 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Gary A. Barrett (IA)
Ivan L. Beal (NE)
Johnny A. Beutler (SD)
Daniel R. Brewer (WA)
Andre G. Burns (TX)
Brett L. Condon (MD)
Christopher A. Deadman (MI)
William K. Gullett (KY)
Daryl A. Jester (DE)
James P. Jones (ME)
Clyde H. Kitzan (ND)
Larry J. Lang (MI)
Spencer E. Leonard (OH)
Ronald L. Maynard (TX)
William A. Moore, Jr. (NV)
Steven A. Proctor (TX)
Richard S. Rehbein (MN)
Bernard E. Roche (VA)
Luis H. Sanchez (WI)
David E. Sanders (NC)
David B. Speller (MN)
Kenneth C. Steele (TX)
Lynn D. Veach (IA)
Harry S. Warren (FL)
Michael C. Wines (MD)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination;

and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 25 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 65 FR 20245; 65 FR 45817; 65 FR 57230; 65 FR 77066; 65 FR 78256; 66 FR 16311; 66 FR 17743; 66 FR 17994; 66 FR 33990; 67 FR 57266; 68 FR 13360; 68 FR 19598; 68 FR 33570; 68 FR 35772; 70 FR 2701; 70 FR 16887; 70 FR 17504; 70 FR 25878; 70 FR 30997; 70 FR 33937; 71 FR 32183; 71 FR 41310; 72 FR 180; 72 FR 9397; 72 FR 12666; 72 FR 25831; 72 FR 28093; 72 FR 32705; 73 FR 61927; 74 FR 6211; 74 FR 15586; 74 FR 19267; 74 FR 19270; 74 FR 26464; 74 FR 28094; 75 FR 64396; 76 FR 21796; 76 FR 32016; 76 FR 34135). Each of these 25 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

**Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by July 8, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 25 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 29, 2013.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2013–13411 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2013–0025]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 26 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** The exemptions are effective June 6, 2013. The exemptions expire on June 6, 2015.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

**Background**

On April 4, 2013, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (78 FR 20376). That notice listed 26 applicants' case histories. The 26 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 26 applications on their merits and made a determination to grant exemptions to each of them.

**Vision and Driving Experience of the Applicants**

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 26 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, refractive amblyopia, optic atrophy, a macular scar, chorioretinal scarring, a central macular scar, aphakia, a retinal scar, open angle glaucoma, advanced glaucoma, optic neuritis, a corneal scar, loss of central vision, and metallic intraocular foreign body with subsequent pars plana vitrectomy with foreign body extraction, endolaser photocoagulation, cryotherapy, and cataract extraction with IOL implant. In most cases, their eye conditions were not recently developed. Seventeen of the applicants were either born with their vision impairments or have had them since childhood.

The nine individuals that sustained their vision conditions as adults have had it for a period of 7 to 40 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 26 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 2.5 to 42 years. In the past 3 years, none of the drivers were involved in crashes but four were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 4, 2013 notice (78 FR 20376).

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association,

June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 26 applicants, none of the drivers were involved in a crash and four were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 26 applicants listed in the notice of April 4, 2013 (78 FR 20376).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 26 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Discussion of Comments**

FMCSA received no comments in this proceeding.

**Conclusion**

Based upon its evaluation of the 26 exemption applications, FMCSA exempts Glenn Blanton (OH), Matthew Buersken (MN), Fred Fricks (PA), Mark E. Haukom (MN), Wesley D. Hogue (AR), Anthony Lang (NH), Jason Laub (OH), Edward Lavin (CT), Wayne Litwiller (IL), Edward Matiukas (MD), Luther McKinney (VA), Steven J. McLain (TN), Enes Milanovic (MI), James McClure (NC), Donie Rhoads (MT), Alfred J. Riesselman (MN), Leo D. Roy (NH), Steven Schaumberg (NJ), Gregory C. Simmons (MD), Merreo A. Stewart (MN), Jeffrey P. Streech (MN), James B. Taflinger, Sr. (VA), Ronald W. Thompson (WI), Walter S. Vollmer (ID), Roy J. Ware (GA), and Paul Williams (NY) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 29, 2013.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2013–13414 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2013–0029]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 69 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

**DATES:** Comments must be received on or before July 8, 2013.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0029 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. Note

that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 69 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

## Qualifications of Applicants

*Roger Bell*

Mr. Bell, age 55, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''Vision is stable and able to drive a commercial vehicle.'' Mr. Bell reported that he has driven straight trucks for 29 years, accumulating 203,000 miles. He holds a Class B Commercial Driver's License (CDL) from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Kolby Blackner*

Mr. Blackner, 31, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''In my opinion, Kolby has adequate vision to perform his driving tasks required to operate a commercial vehicle.'' Mr. Blackner reported that he has driven straight trucks for 6 years, accumulating 37,440 miles, and tractor-trailer combinations for 13 years, accumulating 868,218. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Mark Bouchard*

Mr. Bouchard, 59, has had a retinal detachment in his left eye since 1998. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2012, his optometrist noted, ''Mark has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bouchard reported that he has driven straight trucks for 25 years, accumulating 687,500 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Michael Britt*

Mr. Britt, 50, has had phthisis bulbi in his right eye since childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2013, his ophthalmologist noted, ''In my medical opinion, the patient has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Britt reported that he has driven straight trucks for 31 years, accumulating 241,800 miles. He holds an operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Daryl Carpenter*

Mr. Carpenter, 51, has had retinal scarring in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2012, his optometrist noted, ''Patient has history of injury to left eye 40 years ago. This is a stable condition and Mr. Carpenter can continue driving commercial vehicles.'' Mr. Carpenter reported that he has driven straight trucks for 28 years, accumulating 630,000 miles. He holds a Class BM CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Michael Cassella*

Mr. Cassella, 48, has had retinal stapholoma in his left eye since birth. The visual acuity in his right eye is 20/30, and in his left eye, 20/60. Following an examination in 2013, his ophthalmologist noted, ''In my medical opinion, Mr. Michael Cassella has sufficient vision, color vision and peripheral vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Cassella reported that he has driven straight trucks for 30 years, accumulating 450,000 miles, and tractor-trailer combinations for 30 years, accumulating 1.5 million miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Daniel G. Cohen*

Mr. Cohen, 62, has had a complete loss of vision in his left eye since birth. The visual acuity in his right eye is 20/30, and in his left eye, no light perception. Following an examination in 2012, his ophthalmologist noted, ''In my medical opinion, Mr. Cohen passes all the requirements as you have listed above. I assume these are the requirements that are needed to drive a commercial vehicle. If these requirements are indeed as such, then he does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Cohen reported that he has driven tractor-trailer combinations for 3.5 years, accumulating 175,000 miles. He holds a Class A CDL from Vermont. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Twila Cole*

Ms. Cole, 45, has had refractive amblyopia in her left eye since childhood. The visual acuity in her right eye is 20/15, and in her left eye, 20/50. Following an examination in 2012, her optometrist noted, ''In my medical opinion, Ms. Cole has sufficient enough vision to operate a commercial vehicle.'' Ms. Cole reported that she has driven straight trucks for 15 years, accumulating 750,000 miles, and tractor-trailer combinations for 18 years, accumulating 450,000 miles. She holds a Class A CDL from Oregon. Her driving record for the last 3 years shows one crash, for which she was not cited, and one conviction for moving a violation in a CMV; she failed to obey a traffic signal.

*Brian Cordell*

Mr. Cordell, 45, has had optic nerve atrophy in his left eye since childhood due to a traumatic incident. The visual acuity in his right eye is 20/15, and in his left eye, 20/250. Following an examination in 2013, his ophthalmologist noted, ''Based on this information, I continue to believe the patient can—and has demonstrated with his driving record—that his visual capacity is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Cordell reported that he has driven straight trucks for 2 years, accumulating 120,000 miles, and tractor-trailer combinations for 9 years, accumulating 1.1 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit by 11 mph.

*Aubrey R. Cordrey, Jr.*

Mr. Cordrey, 54, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2012, his optometrist noted, ''I certify in my opinion, you have sufficient vision to perform driving tasks to operate a commercial vehicle.'' Mr. Cordrey reported that he has driven straight trucks for 2 years, accumulating 4,000 miles, and buses for 33 years, accumulating 66,000 miles. He holds an operator's license from Delaware. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Jimmie Crenshaw*

Mr. Crenshaw, 46, has had exotropia in his right eye since childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''In my opinion, Mr. Crenshaw's vision is adequate for commercial driving.'' Mr. Crenshaw reported that he has driven straight trucks for 8 years, accumulating 96,000 miles, and tractor-trailer combinations for 15 years, accumulating 1.7 million miles. He holds a Class AM CDL from Alabama. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

*Thomas W. Crouch*

Mr. Crouch, 53, has had a macular hemorrhage in his right eye in 2009. The visual acuity in his right eye is counting fingers, and in his left eye, 20/25. Following an examination in 2013, his ophthalmologist noted, ''At this time with such good vision in the left eye I do not see any reason why he should not be able to safely drive a commercial vehicle.'' Mr. Crouch reported that he has driven straight trucks for 5 years, accumulating 262,500 miles, and tractor-trailer combinations for 28 years, accumulating 2.8 million miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Alan E. Cutright*

Mr. Cutright, 67, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2013, his optometrist noted, ''Mr. Cutright, in my opinion has sufficient vision to drive a commercial vehicle.'' Mr. Cutright reported that he has driven straight trucks for 12 years, accumulating 249,600 miles. He holds an operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Jon K. Dale*

Mr. Dale, 42, has had complete loss of vision in his right eye since birth. The visual acuity in his right eye is no light perception, and in his left eye, 20/25. Following an examination in 2012, his ophthalmologist noted, ''Mr. Dale does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Dale reported that he has driven straight trucks for 3 years, accumulating 84,000 miles. He holds an operator's license from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Bert A. Damm*

Mr. Damm, 53, has had refractive amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2013, his optometrist noted, ''In my opinion, Bert Damm has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Damm reported that he has driven straight trucks for 35 years, accumulating 19,250 miles, and tractor-trailer combinations for 35 years, accumulating 3 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Jeffrey Dauterman*

Mr. Dauterman, 42, has had complete loss of vision in his right eye since 2012. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''In my medical opinion, Mr. Dauterman does have sufficient vision to perform the driving tasks required to operate a commercial vehicle if his vision results are consistent with any and all requirements of the US Department of Transportation visual requirements and specifications.'' Mr. Dauterman reported that he has driven straight trucks for 8 months, accumulating 2,000 miles, and tractor-trailer combinations for 13 years, accumulating 1.3 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Brian Dowd*

Mr. Dowd, 56, has had a prosthetic left eye since childhood due to a traumatic incident. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2013, his optometrist noted, ''Brian Dowd is capable and has sufficient vision to operate commercial vehicle in my professional medical opinion.'' Mr. Dowd reported that he has driven straight trucks for 33 years, accumulating 237,600 miles. He holds a Class BM CDL from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Verlin L. Driskell*

Mr. Driskell, 40, has had a retinal detachment in his left eye since 2009 due to a traumatic incident. The visual acuity in his right eye is 20/15, and in his left eye, light perception. Following an examination in 2013, his optometrist

noted, ''In my opinion, Mr. Driskell has sufficient vision to operate a commercial vehicle as he has the past 17 years, 3 years with current situation.'' Mr. Driskell reported that he has driven straight trucks for 4 years, accumulating 400,000 miles, and tractor-trailer combinations for 15 years, accumulating 2 million miles. He holds a Class A CDL from Nebraska. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Sonya Duff*

Ms. Duff, 36, has had keratitis in her left eye since 2011. The visual acuity in her right eye is 20/20, and in her left eye, 20/80. Following an examination in 2012, her optometrist noted, ''In my medical opinion, I do feel that Sonya Duff has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Ms. Duff reported that she has driven straight trucks for 1 year, accumulating 125,000 miles, and tractor-trailer combinations for 16 years, accumulating 2 million miles. She holds a Class A CDL from Indiana. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Dennis C. Edler*

Mr. Edler, 62, has had a traumatic globe rupture in his left eye since 1971. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2012, his optometrist noted, ''It is my medical opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Edler reported that he has driven straight trucks for 41 years, accumulating 533,000 miles. He holds a Class BM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Randy L. Fales*

Mr. Fales, 40, has had chronic open angle glaucoma in his left eye since 2008. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2013, his ophthalmologist noted, ''In my medical opinion your vision is sufficient to perform the driving tasks required of you to operate a commercial vehicle.'' Mr. Fales reported that he has driven straight trucks for 19 years, accumulating 190,000 miles, and tractor-trailer combinations for 19 years, accumulating 475,000 miles. He holds an operator's license from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Heidi S. Feldhaus*

Ms. Feldhaus, 47, has had a prosthetic right eye since 1975. The visual acuity in her right eye is no light perception, and in her left eye, 20/20. Following an examination in 2012, her ophthalmologist noted, ''It is my opinion that she has sufficient vision to perform tasks required for operating her commercial vehicle.'' Ms. Feldhaus reported that she has driven straight trucks for 10 years, accumulating 500,000 miles. She holds a Class A CDL from South Dakota. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Robert Fox*

Mr. Fox, 44, has had anisometropic amblyopia in his right eye since childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''From his examination it is my medical opinion that he can perform driving tasks required in the operation of a commercial vehicle. He will require glasses to do this but can obtain an excellent visual acuity of 20/20 in the left eye.'' Mr. Fox reported that he has driven straight trucks for 24 years, accumulating 48,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Steve Garrett*

Mr. Garrett, 40, has had a retinal detachment in his left eye since 1992. The visual acuity in his right eye is 20/30, and in his left eye, light perception. Following an examination in 2013, his ophthalmologist noted, ''Total visual field deficit left eye. Right eye no visual field deficit for 120 degrees horizontally. Color vision 16/16 both eyes. Pt [sic] has ability to recognize color traffic signals. In my medical opinion this gentleman has the capacity to operate a commercial vehicle.'' Mr. Garrett reported that he has driven straight trucks for 5 years, accumulating 19,500 miles, and tractor-trailer combinations for 5 years, accumulating 450,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Keith M. Gehrman*

Mr. Gehrman, 52, has had complete loss of vision in his right eye since childhood. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''Keith's vision is adequate to drive a commercial vehicle.'' Mr. Gehrman reported that he has driven straight trucks for 34 years, accumulating 408,000 miles, and tractor-trailer combinations for 34 years, accumulating 170,000 miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Scott Gilroy*

Mr. Gilroy, 41, has had refractive amblyopia in his right eye since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''Mr. Gilroy demonstrates vision sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gilroy reported that he has driven straight trucks for 1 year, accumulating 15,000 miles, and tractor-trailer combinations for 17 years, accumulating 800,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Elbert D. Grant*

Mr. Grant, 59, has had a macular retinal scar in his right eye since 1969. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''In my medical opinion Mr. Dale Grant has sufficient vision to perform the driving tasks [sic] required to operate a commercial vehicle.'' Mr. Grant reported that he has driven straight trucks for 37 years, accumulating 1.9 million miles, and tractor-trailer combinations for 37 years, accumulating 1.9 million miles. He holds an operator's license from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Henry M. Greer*

Mr. Greer, 77, has had scarring in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2013, his optometrist noted, ''In my medical opinion, Mr. Greer has sufficient vision to continue to perform the driving tasks required to operate a commercial vehicle.'' Mr. Greer reported that he has driven straight trucks for 46 years, accumulating 115,000 miles, and

tractor-trailer combinations for 46 years, accumulating 335,800 miles. He holds a Class DMA CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Michael L. Grogg*

Mr. Grogg, 49, has had ocular histoplasmosis syndrome in his left eye since 1989. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2013, his ophthalmologist noted, ''The loss of central vision is due to presumed ocular histoplasmosis syndrome. This has been stable since 1989 and, given his intact color vision and intact visual fields, he would seem to have sufficient vision to operate a commercial vehicle.'' Mr. Grogg reported that he has driven straight trucks for 10 years, accumulating 130,000 miles. He holds an operator's license from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Marc C. Grooms*

Mr. Grooms, 43, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/60, and in his left eye, 20/15. Following an examination in 2012, his optometrist noted, ''To the best of my knowledge based on my ocular examination findings, I believe that Marc has the ability to safely operate a commercial vehicle.'' Mr. Grooms reported that he has driven straight trucks for 21 years, accumulating 105,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Luc Guimond*

Mr. Guimond, 55, has had toxoplasmosis in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/25. Following an examination in 2012, his ophthalmologist noted, ''I certify that in my medical opinion, Mr. Luc Guimond has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Guimond reported that he has driven straight trucks for 3 months, accumulating 500 miles, and tractor-trailer combinations for 11 years, accumulating 1.1 million miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and one conviction for moving violation in a CMV; he exceeded the speed limit by 12 mph.

*Walter A. Hanselman*

Mr. Hanselman, 59, has had refractive amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/15. Following an examination in 2013, his optometrist noted, ''In my professional opinion, Mr. Hanselman does have sufficient vision to perform the driving tasks that would be required to operate a commercial vehicle.'' Mr. Hanselman reported that he has driven straight trucks for 1 year, accumulating 34,000 miles, and tractor-trailer combinations for 42 years, accumulating 4.2 million miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Richard D. Holcomb*

Mr. Holcomb, 30, has had exotropia in his right eye since birth. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''It is my professional opinion that Richard Holcomb can operate a commercial vehicle safely. I have examined his eyes since 1995 and his visual condition is stable.'' Mr. Holcomb reported that he has driven straight trucks for 12 years, accumulating 378,000 miles. He holds an operator's license from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Brian C. Holt*

Mr. Holt, 30, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/150, and in his left eye, 20/30. Following an examination in 2012, his optometrist noted, ''In my professional opinion, Mr. Holt has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Holt reported that he has driven straight trucks for 8 years, accumulating 24,000 miles. He holds a Class B CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Ronald E. Howard*

Mr. Howard, 59, has had anisometropic amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/300, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''It is my medical opinion that Mr. Howard has the sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Howard reported that he has driven straight trucks for 35 years, accumulating 87,500 miles, and tractor-trailer for 35 years, accumulating 437,500 miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Berl C. Jennings*

Mr. Jennings, 83, has had a retinal detachment in his right eye since 1994. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''In my medical opinion, Mr. Berl Jennings demonstrated sufficient vision to perform driving tasks in which are required to operate a commercial vehicle.'' Mr. Jennings reported that he has driven straight trucks for 40 years, accumulating 1.7 million miles, and tractor-trailer combinations for 20 years, accumulating 850,000 miles. He holds a Class AM CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Michael Kelly*

Mr. Kelly, 30, has had psuedophakia with nystagmus in his left eye since birth. The visual acuity in his right eye is 20/30, and in his left eye, 20/50. Following an examination in 2012, his optometrist noted, ''In my professional medical opinion, Mr. Michael Kelly has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Kelly reported that he has driven straight trucks for 4.5 years, accumulating 225,000 miles, and tractor-trailer combinations for 6.5 years, accumulating 975,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Aaron D. Kerr*

Mr. Kerr, 30, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/300. Following an examination in 2012, his optometrist noted, ''It is my impression that Mr. Kerr has sufficient vision in order to operate a commercial vehicle.'' Mr. Kerr reported that he has driven straight trucks for 8 years, accumulating 144,000 miles, and tractor-trailer combinations for 4 years, accumulating 24,000 miles. He holds a Class A CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Craig Mahaffey*

Mr. Mahaffey, 39, has had a prosthetic right eye since childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''In my medical opinion, his visual acuity in the left eye is normal and sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Mahaffey reported that he has driven straight trucks for 14 years, accumulating 140,000 miles, and tractor-trailer combinations for 16 years, accumulating 96,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Stanley Marshall*

Mr. Marshall, 44, has had a prosthetic left eye since 2009. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2012, his optometrist noted, ''Mr. Marshall has a field of vision equal to 160 degrees of horizontal peripheral vision based on the Humphreys FDT visual field testing. And with slight head turn he is capable of very adequate field of view to interact with his environment. I, Dr. Stephen Summerow, O.D., certify that it is my medical opinion that Mr. Marshall is able to successfully operate a commercial vehicle and perform all driving task [sic].'' Mr. Marshall reported that he has driven straight trucks for 19 years, accumulating 2 million miles, and tractor-trailer combinations for 19 years, accumulating 89,984 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Michael Martin*

Mr. Martin, 37, has had strabismic amblyopia in his right eye since childhood. The visual acuity in his right eye is hand motion, and in his left eye, 20/15. Following an examination in 2012, his optometrist noted, ''Mr. Martin meets the monocular driving requirements for a commercial vehicle based on visual acuity, visual field, and color vision testing.'' Mr. Martin reported that he has driven straight trucks for 5 years, accumulating 50,000 miles. He holds an operator's license from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Michael McGee*

Mr. McGee, 66, has had a hypoplastic optic nerve in his right eye since childhood. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''He has sufficient visual performance to operate a commercial vehicle.'' Mr. McGee reported that he has driven straight trucks for 10 years, accumulating 500,000 miles, and tractor-trailer combinations for 15 years, accumulating 1.2 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Ignar L. Meyer*

Mr. Meyer, 58, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''Mr. Meyer has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Meyer reported that he has driven straight trucks for 7 years, accumulating 112,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

*James W. Mize, Sr.*

Mr. Mize, 64, has had refractive amblyopia in his left eye since birth. The visual acuity in his right eye is 20/25, and in his left eye, 20/70. Following an examination in 2013, his ophthalmologist noted, ''His vision appears to me to be sufficient to allow him to perform commercial driving for which he is certified.'' Mr. Mize reported that he has driven straight trucks for 2 years, accumulating 150,000 miles, and tractor-trailer combinations for 10 years, accumulating 1 million miles. He holds a Class AM CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Roy L. Morgan*

Mr. Morgan, 55, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/25, and in his left eye, 20/300. Following an examination in 2012, his optometrist noted, ''He was a gentleman who presented to the clinic for a vision assessment to obtain commercial vehicle driving privileges . . . There are no indications based on his visual field or visual acuity today that would impair his ability to perform his job.'' Mr. Morgan reported that he has driven straight trucks for 12 years, accumulating 217,200 miles. He holds an operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Rick Nickell*

Mr. Nickell, 58, has had esotropia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''In my opinion, Mr. Nickell has sufficient visual acuity and field of vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Nickell reported that he has driven straight trucks for 32 years, accumulating 320,000 miles, and tractor-trailer combinations for 20 years, accumulating 10,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Richard E. Perry*

Mr. Perry, 58, has had a retinal detachment in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2012, his ophthalmologist noted, ''In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Perry reported that he has driven tractor-trailer combinations for 35 years, accumulating 3.5 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and two convictions for moving violations in a CMV; he exceeded the speed limit by 11 mph, and again by 9 mph.

*Freddy H. Pete*

Mr. Pete, 55, has had a prosthetic right eye since childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''I believe that Mr. Pete has sufficient vision and skills to perform the driving tasks required to safely operate a commercial vehicle while utilizing additional side mirrors.'' Mr. Pete reported that he has driven straight trucks for 14 years, accumulating 700,000 miles, and tractor-trailer combinations for 1 year, accumulating 500 miles. He holds a Class A CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Ricky Reeder*

Mr. Reeder, 51, has had complete loss of vision in his left eye since 1980. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2012, his optometrist noted, ''Mr. Reeder has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Reeder reported that he has driven tractor-trailer combinations for 15 years, accumulating 1.7 million miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Louis A. Requena*

Mr. Requena, 50, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''Since this is a longstanding deficiency of the right eye in my opinion Mr. Requena is capable of maintaining his commercial driver's license.'' Mr. Requena reported that he has driven straight trucks for 22 years, accumulating 264,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Berry A. Rodrigue, Jr.*

Mr. Rodrigue, 49, has had a retinal tear in his left eye since birth. The visual acuity in his right eye is 20/25, and in his left eye, hand motion. Following an examination in 2013, his optometrist noted, ''20/25 overall vision is a sufficient visual acuity for a commercial vehicle driver's license.'' Mr. Rodrigue reported that he has driven straight trucks for 32 years, accumulating 1.9 million miles, and tractor-trailer combinations for 32 years, accumulating 1.9 million miles. He holds a Class A CDL from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Stephen R. Sargent*

Mr. Sargent, 69, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2012, his optometrist noted, ''In my medical opinion, Mr. Sargent has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sargent reported that he has driven straight trucks for 2 years, accumulating 116,000 miles, and buses for 10 years, accumulating 70,000 miles. He holds a Class B CDL from Maine. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Leonard Sheehan*

Mr. Sheehan, 51, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2013, his optometrist noted, ''It is my impression Mr. Sheehan has sufficient visual skills to perform the driving tasks of a commercial vehicle.'' Mr. Sheehan reported that he has driven straight trucks for 31 years, accumulating 434,000 miles, and tractor-trailer combinations for 10 years, accumulating 50,000 miles. He holds an operator's license from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Michael L. Sherum*

Mr. Sherum, 52, has had angle recession glaucoma in his left eye since 1988. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2013, his ophthalmologist noted, ''Given the fact that he has lived with this deficit for many years and adapted well and continued to drive safely it is my medical opinion that he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Sherum reported that he has driven straight trucks for 12 years, accumulating 748,800 miles, and tractor-trailer combinations for 17 years, accumulating 2 million miles. He holds a Class AM CDL from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Manjinder Singh*

Mr. Singh, 28, has had central serous retinopathy in his right eye since 2003. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2013, his ophthalmologist noted, ''His visual deficiency is stable with no changes since 2003 . . . In my opinion Mr. Singh is able to perform driving tasks to operate a commercial vehicle.'' Mr. Singh reported that he has driven straight trucks for 2 years, accumulating 26,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Wayne Stein*

Mr. Stein, 57, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/25, and in his left eye, 20/200. Following an examination in 2013, his optometrist noted, ''Mr. Stein has the ability to perform driving tasks required to operate a commercial vehicle with corrected vision.'' Mr. Stein reported that he has driven straight trucks for 20 years, accumulating 152,000 miles. He holds an operator's license from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Eddie B. Strange, Jr.*

Mr. Strange, 36, has had a macular hole in his right eye since 1997 due to a traumatic incident. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''His visual deficiency is stable at this time. He is able to drive a commercial motor vehicle.'' Mr. Strange reported that he has driven straight trucks for 3 years, accumulating 120,000 miles, and tractor-trailer combinations for 6 years, accumulating 300,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Michael J. Thane*

Mr. Thane, 47, has had refractive amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''Mr. Thane has sufficient vision to operate a commercial vehicle.'' Mr. Thane reported that he has driven straight trucks for 10 years, accumulating 2.5 million miles, and tractor-trailer combinations for 5 years, accumulating 1.5 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he failed to obey a traffic control sign.

*Larry A. Tidwell*

Mr. Tidwell, 61, has had a prosthetic right eye since 1975. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''I feel that Mr. Tidwell has sufficient vision to operate a commercial vehicle.'' Mr. Tidwell reported that he has driven straight trucks for 22 years, accumulating 114,400 miles, tractor-trailer combinations for 22 years, accumulating 114,400 miles, and buses for 5 years, accumulating 36,000 miles. He holds a Class A CDL for Missouri. His driving record for the last 3 years shows no

crashes and no convictions for moving violations in a CMV.

*Dale Torkelson*

Mr. Torkelson, 59, has had a prosthetic right eye since 2009 due to a traumatic incident. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''my medical opinion for his vision and if it is safe enough to operate a commercial vehicle—I believe he is absolutely safe to drive across state lines.'' Mr. Torkelson reported that he has driven straight trucks for 19 years, accumulating 304,000 miles, tractor-trailer combinations for 16 years, accumulating 1.6 million miles, and buses for 12 years, accumulating 60,000 miles. He holds a Class ABCDM CDL from Wisconsin. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

*Norman Vanderzyl*

Mr. Vanderzyl, 72, has had complete loss of vision in his right eye since 1946. The visual acuity in his right eye is no light perception, and in his left eye, 20/25. Following an examination in 2012, his ophthalmologist noted, ''In addressing his questions for his medical DOT requirements, he has had injury to his right eye with barbwire, a traumatic issue a long time ago, 1946. He has no useful vision in that eye. Fortunately, his left eye is doing very well with full vision . . . With proper mirrors, he should be adequate to drive.'' Mr. Vanderzyl reported that he has driven straight trucks for 50 years, accumulating 1.3 million miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*John Vanek*

Mr. Vanek, 70, has had anterior ischemic optic neuropathy in his right eye since 2004. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2012, his ophthalmologist noted, ''His visual acuity was count fingers in the right eye and 20/20 in the left with 120 degree visual field of vision [sic]. He is able to identify red, green, and amber colors and very capable of driving and operating a commercial vehicle.'' Mr. Vanek reported that he has driven straight trucks for 49 years, accumulating 2 million miles, and tractor-trailer combinations for 49 years, accumulating 3 million miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*James D. Vorderbruggen*

Mr. Vorderbruggen, age 49, has had ocular histoplasmosis syndrome in his left eye since 1995. The visual acuity in his right eye is 20/20, and in his left eye, 10/600. Following an examination in 2012, his optometrist indicated that he does not have any visual defects or field loss that would affect the safe operation of a commercial motor vehicle. Mr. Vorderbruggen reported that he has driven straight trucks for 32 years, accumulating 640,000 miles. He holds an operator's license from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Desmond Waldor*

Mr. Waldor, 54, has had a corneal scar in his right eye since 2004. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2013, his ophthalmologist noted, ''He does have the ability to continue working a commercial vehicle given the excellent vision in his left eye, although his depth perception is somewhat limited.'' Mr. Waldor reported that he has driven straight trucks for 38 years, accumulating 152,000 miles, and buses for 4 years, accumulating 54,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Alicia M. Waters*

Ms. Waters, 57, has had a macular scar in her right eye since 1992. The visual acuity in her right eye is 20/80, and in her left eye, 20/20. Following an examination in 2012, her optometrist noted, ''It is my opinion that she has the visual ability to perform the driving tasks needed to operate a commercial motor vehicle.'' Ms. Waters reported that she has driven straight trucks for 34 years, accumulating 68,000 miles, and tractor-trailer combinations for 9 years, accumulating 13,500 miles. She holds a Class A CDL from Illinois. Her driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Norman R. Wilson*

Mr. Wilson, 65, has had retinal scarring in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2013, his optometrist noted, ''In my medical opinion, you have sufficient binocular vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wilson reported that he has driven straight trucks for 37 years, accumulating 740,000 miles, and tractor-trailer combinations for 15 years, accumulating 600,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*James G. Witt*

Mr. Witt, 62, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''He has some problems keeping fixation on the fields with his amblyopic eye but I find no deficiencies that would make him unsafe provided he has dual outside rear view mirrors on any vehicle he operates.'' Mr. Witt reported that he has driven straight trucks for 30 years, accumulating 600,000 miles, and tractor-trailer combinations for 3 years, accumulating 360,000 miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*James L. Young*

Mr. Young, 66, has had exotropia and amblyopia in his right eye since birth. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2013, his optometrist noted, ''Mr. Young is applying for a CDL Disability waiver due to his not meeting the 20/40 vision requirement in his right eye . . . He has functioned all his life with this condition and has driven many years without incident. He is able to perform any driving requirements necessary for CDL licensure.'' Mr. Young reported that he has driven straight trucks for 48 years, accumulating 480,000 miles, and tractor-trailer combinations for 48 years, accumulating 3.3 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Sam D. Zachary*

Mr. Zachary, age 57, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/25, and in his left eye, 20/80. Following an examination in 2013, his optometrist noted, ''Mr. Zachary has sufficient vision to operate a

commercial vehicle with his correction.'' Mr. Zachary reported that he has driven tractor-trailer combinations for 36 years, accumulating 2.5 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he was driving too fast for the road conditions.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business July 8, 2013. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: May 29, 2013.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2013–13410 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2013–0050]**

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated February 14, 2013, the Wisconsin Central Limited (WC) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2013–0050.

*Applicant:* Wisconsin Central Limited, Mr. Thomas W. Hilliard, Senior Manager S&C, Engineering Department, Southern Region, 17641 South Ashland Avenue, Homewood, IL 60430.

WC, which is a subsidiary of the Canadian National Railway (CN), seeks approval of the proposed discontinuance and removal of a traffic control system (TCS) from Milepost (MP) 44.4, Stockton 2, to MP 45.4, Kirk Yard Junction, including the removal of Control Point (CP) Kirk Yard Junction on the Matteson Subdivision in Gary, IN.

In its petition, WC states that it seeks the proposed changes because the reconfiguration of the entrance to the Kirk Yard requires that an existing main track be converted to a yard pull down track. At the present end of the TCS at Stockton 2, WC will convert the current three tracks to four tracks, creating two new yard leads. The TCS limits will begin and end at Stockton 2. All diverging routes in Stockton 2 will remain as part of the TCS on the Matteson Subdivision.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 22, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on June 3, 2013.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2013–13458 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2012–0087]**

### Notice of Public Hearing: Norfolk Southern Corporation

The Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) seeking the approval of the proposed discontinuance of automatic signals within traffic control system (TCS) territory and the installation of a cab signal system without automatic wayside signals on the NS Pittsburgh Line, from Harrisburg, PA, Milepost (MP) PT 104.90 to Pittsburgh, PA, MP PT 353.35. All existing automatic signals on this line will be removed.

This proceeding is identified as FRA block signal application Docket Number FRA–2012–0087. A copy of NS's full petition is available for review online at *http://www.regulations.gov* under the docket number identified above.

FRA conducted a field investigation in this matter and issued a public notice seeking comments from interested parties. *See* 77 FR 74736 (December 17, 2012). After examining NS's proposal, the comments to NS's proposal, and the available facts, FRA determined that a public hearing is necessary before a final decision is made on NS's block signal application. Accordingly, FRA invites all interested parties to participate in a public hearing on July 23, 2013. The hearing will be conducted at the Moon Township Building, 1000 Beaver Grade Road, Moon Township, PA 15108. The hearing will begin at 9:00 a.m. Interested parties are invited to present oral statements at the hearing. For information on facilities or services for persons with disabilities, or to request special assistance at the hearing,

contact Ms. Tiffany McAlpine, Administrative Staff Assistant, by telephone, email, or in writing, at least 5 business days before the date of the hearing. Ms. McAlpine's contact information is as follows: FRA, Office of Chief Counsel, Mail Stop 10, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone: (202) 493–6055; email: *Tiffany.McAlpine@dot.gov.* Alternatively, you may contact Mr. Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, at (202) 493–6258 or *Paul.Weber@dot.gov.*

The hearing will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25) by a representative designated by FRA. The hearing will be a nonadversarial proceeding; therefore, there will be no cross-examination of persons presenting statements. An FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on June 3, 2013.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2013–13470 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. DOT 2013 0066]**

### Request for Comments on a New Information Collection

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on December 20, 2012. No comments were received.

**DATES:** Comments must be submitted on or before July 8, 2013.

**FOR FURTHER INFORMATION CONTACT:** Barbara Jackson, Maritime Administration, 1200 New Jersey Avenue SE., W26–494, Washington, DC 20590. Telephone: 202–366–0615; or email *barbara.jackson@dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Maritime Administration Service Delivery.

*OMB Control Number:* 2133–NEW.

*Type of Request:* New Information Collection.

*Abstract:* This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

*Average Expected Annual Number of activities:* 15.

*Estimated Number of Respondents:* 713.

*Annual Estimated Total Annual Burden Hours:* 10,700.

*Frequency of Response:* Once.

**ADDRESSES:** Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: MARAD Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov.* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**AUTHORITY:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

Issued in Washington, DC on May 28, 2013.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2013–13378 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket No. NHTSA–2013–0069]**

### Reports, Forms, and Record Keeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes the collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before August 5, 2013.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number NHTSA–2013–0069 using any of the following methods:

*Electronic submissions:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

*Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

*Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Block, Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–131), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W46–499, Washington, DC 20590. Mr. Block's phone number is 202–366–6401 and his email address is *alan.block@dot.gov*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(I) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

**Motor Vehicle Occupant Safety Survey (MVOSS)**

*Type of Request*—Reinstatement with change.

*OMB Clearance Number*—2127–0645.

*Form Number*—NHTSA 1020A and NHTSA 1020B.

*Requested Expiration Date of Approval*—3 years from date of approval.

*Summary of the Collection of Information*—NHTSA proposes to conduct the Motor Vehicle Occupant Safety Survey (MVOSS) among a national probability sample of 12,000 adults (age 16 and older). The MVOSS focuses on issues related to seat belt and child restraint use, and has been conducted on a periodic basis by NHTSA since 1994. This would be the seventh administration of the MVOSS. Participation by respondents would be voluntary.

NHTSA's information needs require seat belt and child safety seat sections too large to merge into a single survey instrument without producing an inordinate burden on respondents. Rather than reduce these sections, the proposed survey instrument is divided into two questionnaires. Each questionnaire would be administered to one-half the total number of respondents to be interviewed. The average amount of time for respondents to complete either questionnaire is estimated to be 15 minutes, a slight reduction from earlier years due to the inclusion of fewer questions. Questionnaire #1 would focus on seat belts and include smaller sections on air bags, on general driving (including speed), and on drinking and driving because of the extensive impact of alcohol on the highway safety problem. Questionnaire #2 would focus on child restraint use, accompanied by smaller sections on Emergency Medical Services, and use of wireless phones. Both questionnaires would contain sections on crash injury experience. Some basic seat belt questions contained in Questionnaire #1 would be duplicated on Questionnaire #2.

The survey would use a multi-mode approach that employs Web as the primary response mode, with the on-line technology serving to reduce length and minimize recording errors. Mail and telephone would serve as alternative response modes for respondents that choose not to participate on-line. The telephone interviewers would use computer-assisted telephone interviewing. A Spanish-language translation of the questionnaires, and bilingual interviewers to conduct the telephone interviews, would be used to minimize language barriers to participation.

The multi-mode approach is a major change in methodology from previous administrations of the MVOSS. Therefore, the full administration of the survey would be preceded by a pilot test to assess methods for each of the response modes used in the survey.

The sample for the full administration of the survey would be drawn from an address-based sampling frame. Contact with prospective respondents would be conducted through the mail. The first contact would ask that the sampled household member go to a designated Web site to take the survey. Each respondent would be assigned a unique randomly generated PIN (Personal Identification Number) that must be used to access the questionnaire via computer. Follow up contacts would include mail and telephone as alternative response modes. The personally identifiable information used to contact respondents would be held separately from the information provided by respondents to the survey so that no connection can be made between the two. No personally identifiable information would be collected during the interviews.

*Description of the Need for the Information and Proposed Use of the Information*—NHTSA was established to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

During the late 1960s and early 1970s, more than 50,000 persons were killed each year in motor vehicle crashes in the United States. Diverse approaches were taken to address the problem. Vehicle safety designs and features were improved; restraint devices were improved; safety behaviors were mandated in State legislation (including seat belt use and child safety seat use); alcohol-related legislation was enacted; this legislation was enforced; public information and education activities were widely implemented; and roadways were improved.

As a result of these interventions and improvements, crash fatalities dropped significantly. By 2011, total fatalities had fallen to 32,367, representing a 36% decline from 1966. In addition, the resident population and the number of vehicle miles traveled increased greatly over those years. When fatality rates are computed per 100,000 population, the rate for 2011 (10.39) was about 60 percent lower than the 1966 rate (25.89). In sum, heightened highway safety activity conducted over the past several decades corresponds with major strides in reducing traffic fatalities.

Remaining barriers to safety will be more resistant to programmatic influences now that the easy gains have

already been accomplished. Moreover, crash fatalities rose in 2012. Thus significant effort will be needed just to preserve the gains that already have been made. Up-to-date information is essential to plot the direction of future activity that will achieve reductions in crash injuries and fatalities in the coming years.

As part of its collection of information used to develop and implement effective countermeasures to improve highway traffic safety, NHTSA conducted its first MVOSS in 1994. The survey included questions related to seat belts, child safety seats, air bags, and Emergency Medical Services. It also contained small segments on alcohol use and on speeding. The survey has been repeated five times since then, with the survey instrument updated prior to each survey administration to incorporate emergent issues and items of increased interest. The most recent MVOSS was fielded during the first quarter of calendar year 2007.

The proposed survey is the seventh MVOSS. The survey would collect data on topics included in the preceding surveys and would monitor changes over time in the use of occupant protection devices and in attitudes related to vehicle occupant safety. It is important that NHTSA monitor these changes so that the Agency can determine the effects of its efforts to promote the use of safety devices and to identify areas where its efforts should be targeted and where new strategies may be needed. As in earlier years, NHTSA proposes to make a small number of revisions to the survey instrument to address new information needs. If approved, the proposed survey would assist NHTSA in addressing motor vehicle occupant safety and in formulating programs and recommendations. The results of the proposed survey would be used to: (a) Identify areas to target current programs and activities to achieve the greatest benefit; (b) develop new programs and initiatives aimed at increasing the use of occupant safety devices by the public; and (c) provide informational support to States and localities in their traffic safety efforts. The findings would also be used directly by State and local highway safety and law enforcement agencies in the development and implementation of effective countermeasures to prevent injuries and fatalities to vehicle occupants.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)*—This proposed effort would involve cognitive testing of the questionnaires, usability tests to identify any problems with self-administration of the Web version of the questionnaires, a pilot test, and final survey administration. Businesses are ineligible for the sample and would not be interviewed. No more than one respondent would be selected per household. Each member of the sample would complete one interview.

The cognitive testing would consist of one-on-one cognitive interviews with each of nine persons selected from the general public for each questionnaire, for a total of 18 cognitive interviews. All would be drivers 18 and older. All cognitive interviews using the child restraint use questionnaire would be conducted with parents of children under the age of 9. A maximum of 100 licensed drivers 18 and older would be recruited to participate in usability tests, with all tests of the child restraint use questionnaire conducted with parents of young children. For the pilot test, a maximum of 1,200 completed interviews with people age 16 and older would be obtained. For the final survey, 12,000 completed interviews with randomly selected members of the general public age 16 and older would be obtained, 6,000 per questionnaire. The respondent sample would be selected from all 50 States plus the District of Columbia.

*Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information*—NHTSA estimates that the respondents participating in the cognitive interviewing would average ½ hours to carry out that activity, for a total of 27 hours for the 18 cognitive interviews. NHTSA estimates that the respondents participating in the usability testing would average 1 hour in carrying out that activity. The number of usability testing respondents would not exceed 100, leading to a maximum burden of 100 hours. The projected 1,200 maximum completed interviews for the pilot test, with an average duration of 15 minutes, would produce a maximum burden of 300 hours. The 12,000 final survey interviews, with an average duration of 15 minutes, would produce a burden of 3,000 hours. The maximum reporting burden for the MVOSS would be 27 hours for the cognitive testing, 100 hours for the usability testing, 300 hours for the pilot test, and 3,000 hours for the final survey for a grand total of 3,427 hours.

All interviewing would occur during a single calendar year. Thus the annual reporting burden would be the entire 3,427 hours. The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any record keeping burden or record keeping cost from the information collection.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

Issued on: May 31, 2013.

**Jeffrey Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2013–13416 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket No. NHTSA–2013–0070]**

### Reports, Forms, and Record Keeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes the collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before August 5, 2013.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number NHTSA–2013–0070 using any of the following methods:

*Electronic submissions:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

*Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

*Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without change to *http://*

*www.regulations.gov* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Block, Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–131), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W46–499, Washington, DC 20590. Mr. Block's phone number is 202–366–6401 and his email address is *alan.block@dot.gov*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(I) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

**Implementation of a Youth Traffic Safety Survey**

*Type of Request*—New information collection requirement.

*OMB Clearance Number*—None.

*Form Number*—NHTSA Form 1199.

*Requested Expiration Date of Approval*—3 years from date of approval.

*Summary of the Collection of Information*—The National Highway Traffic Safety Administration (NHTSA) proposes to conduct a survey of young drivers ages 16 through 20 concerning traffic safety issues affecting young people in that age range. The survey would use Web as the primary response mode and mail as a second response mode. The sample would be drawn from driver license databases of States that choose to participate in the study. NHTSA would seek participation by eight States, two per Census Region. Contact with prospective respondents would be conducted through the mail. Young drivers would be asked to go to a designated Web site to take the survey. Follow up mailings would include as a second response option a paper version of the questionnaire that respondents can fill out and mail back. The survey would also provide the capability for the interview to be conducted by telephone if the prospective respondent requests that option. The questionnaire would cover topics such as general driving behavior, driver education and graduated driver licensing, parental oversight of driving, distraction and driving, drinking and driving, seat belt use, speeding and racing, crash experience, and traffic violations.

The survey would first be pilot-tested in a single State. One purpose of the pilot test would be to determine if it is feasible to administer the full version of the questionnaire to all respondents, or whether the questionnaire would need to be split into two shorter versions. The average amount of time for respondents to complete the full version of the questionnaire is estimated to be 25 minutes. The average amount of time estimated to complete the shorter versions is 15 minutes. The pilot test would compare the response rates of groups receiving the different questionnaire versions. Combined with other test conditions being used to assess survey administration issues, there would be a total of 9 respondent groups whose response rates would be compared.

The survey would be conducted primarily on-line, with the on-line technology serving to reduce length and minimize recording errors. Each respondent would be assigned a unique randomly generated PIN (Personal Identification Number) that must be used to access the questionnaire on the Web site. The personally identifiable information used to contact respondents would be held separately from the information provided by respondents to the survey so that no connection can be made between the two. No personally identifiable information would be collected during the interviews.

*Description of the Need for the Information and Proposed Use of the Information*—NHTSA was established to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

Young drivers 16- to 20-years old are especially vulnerable to death and injury on our roadways, with traffic crashes being the leading cause of death for teenagers in America. It is essential that NHTSA be proactive in addressing young driver traffic safety. As a data-driven organization, this means collecting and analyzing quality data to identify the nature of young driver traffic safety problems, to guide development of intervention approaches, and to evaluate the effectiveness of interventions. While crash and fatality databases are invaluable sources of data applicable to these tasks, they do not tell the entire story. Attitudes, perceptions, knowledge, beliefs, preferences, and related factors often play a role in how the circumstances underlying a crash evolved. Situational and experiential factors also figure into the equation. Taking a comprehensive approach to preventing young driver crashes requires an understanding of this contextual information in order to fully assess the young driver crash problem and identify specific problems while also locating strategic points for intervention. This survey responds to those information needs.

This survey will fill in gaps in the information that NHTSA has regarding young drivers, and will be used by the agency to help guide its strategic planning of activities to improve traffic safety of people in this age group. States that participate in the survey will be provided with a snapshot picture of attitudes, knowledge, and self-reported driving-related behavior of young people in their State that they can use in their own traffic safety planning activities, and that they can disseminate to their local jurisdictions. The aggregated data across States will provide a status report on where young drivers stand with regards to key traffic safety issues for use by traffic safety professionals and other concerned individuals in planning, developing, refining, and implementing measures to improve young driver safety.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)*—A maximum of 100 licensed drivers ages 18 through 20 would be recruited to participate in usability tests to identify any problems with self-administration of the Web-based questionnaire. Sixteen- and

seventeen-year-olds would not yet be included as not all steps that need to be carried out to allow participation by people this young would have been completed at this stage of the project. Those steps would be completed by the time the project is ready to conduct the pilot test, in which 6,300 young people ages 16 through 20 listed in the driver license database of one State would be mailed a request to participate in the survey. For purposes of burden estimation this project will assume a response rate upper limit of 50%, or a maximum of 3,150 completed pilot test interviews.

The final survey would be administered to young people ages 16 through 20 listed in the driver license database of one of the States participating in the survey. There would be eight participating States. The number of respondents would depend on results of the pilot test in addition to the response rate. For each of the eight States, 8,000 young drivers would be mailed the request to participate in the survey if the pilot test determines that it is feasible to administer the longer version of the questionnaire. An upper limit response rate of 50% equates to a maximum of 4,000 completed interviews per State, or 32,000 for the survey. But if the pilot test indicates that the questionnaire will need to be split into two shorter questionnaires, then the number of respondents would double to a maximum of 64,000 as 8,000 requests to participate in the survey would be mailed per questionnaire in each State.

Businesses are ineligible for the sample and would not be interviewed. All respondents would be administered the survey one time only.

*Estimate of the Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information*—NHTSA estimates that the respondents participating in the usability testing would average 1 hour in carrying out that activity. The number of respondents would not exceed 100, producing a maximum burden of 100 hours.

The projected 3,150 maximum completed interviews for the pilot test would be split among those receiving the full questionnaire (one-third of respondents) and those receiving the shortened versions (two-thirds of respondents, divided between those who get shortened Version A and those who get shortened Version B). The full version would require an average of 25 minutes for the 1,050 respondents for a burden of 437.5 hours. The shortened versions would require an average of 15 minutes for the 2,100 respondents for a burden of 525 hours. The total burden for the pilot test would therefore be a maximum of 962.5 hours.

If the pilot test indicates that administration of the full version of the questionnaire is feasible, then a maximum of 32,000 respondents would spend an average of 25 minutes completing the final survey, for a burden of 13,333.33 hours. If the pilot test instead indicates that the final survey will need to employ the shorter questionnaires, then a maximum of 64,000 respondents would spend an average of 15 minutes completing the survey, for a burden of 16,000 hours.

The maximum reporting burden for the Implementation of a Youth Traffic Safety Survey would be 100 hours for the usability testing, 962.5 hours for the pilot test, and 16,000 hours for the final survey if two questionnaires are used for a grand total of 17,062.5 hours.

All interviewing would occur during a single calendar year. Thus the annual reporting burden would be the entire 17,062.5 hours. The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any record keeping burden or record keeping cost from the information collection.

**Authority:** 44 U.S.C. 3506(c)(2)(A).

Issued on: May 31, 2013.

**Jeffrey Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2013–13415 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2013–0123, Notice No.13–09]**

### Hazardous Materials: Emergency Recall Order

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Emergency Recall Order.

**SUMMARY:** This notice publishes Emergency Recall Order 2013–002 (DOT Docket Number PHMSA–2013–0123), issued on May 24, 2013 to The Lite Cylinder Company, Inc. The Office of Hazardous Materials Safety issued this Emergency Order pursuant to authority granted in 49 U.S.C. 5121(d) and 49 CFR 109.17(c), and is published in accordance with 49 CFR 109.19(f)(2)(iv). Emergency Order 2013–002 mandates a recall of (1) all cylinders manufactured by The Lite Cylinder Company, Inc. and marked as authorized under DOT–SP 14562 (and DOT–SP 13957 as authorized therein) and DOT–SP 13105, (2) any cylinder requalified under H706, and (3) any cylinders manufactured under M5729 (collectively, ''the affected packaging''), and was issued after PHMSA's finding that the affected packaging constitutes, or are causing, an imminent hazard to public safety.

**DATES:** *Effective Date:* May 24, 2013.

**FOR FURTHER INFORMATION CONTACT:** Adam Horsley, Attorney, Office of the Chief Counsel, PHMSA, 202–366–4400.

**SUPPLEMENTARY INFORMATION:** The full text of Emergency Recall Order 2013–002 is as follows:

This notice constitutes an Emergency Recall Order by the United States Department of Transportation (DOT) pursuant to 49 U.S.C. 5121(d) and 49 CFR 109.17(c); and pursuant to delegation of authority to the Associate Administrator, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Hazardous Materials Safety. By this Order, PHMSA is mandating a recall of all cylinders manufactured by The Lite Cylinder Company, Inc. (Lite Cylinder) and marked as authorized under DOT–SP 14562 (and DOT–SP 13957 as authorized therein), DOT–SP 13105; any cylinder requalified under H706; and any cylinders manufactured under M5729 (hereinafter referred to as affected packaging(s)). In addition, this order applies to any person who is in possession of an affected packaging subject to this order.

PHMSA finds that the affected packagings constitute or are causing an imminent hazard to public safety. For more detailed information see ''Background/Basis for Order'' below.

**This Order Applies to**

(1) Lite Cylinder, its officers, directors, employees, subcontractors, investors and agents (''Lite Cylinder''); and

(2) Any person who is in possession of an affected packaging, including any officers, directors, employees, subcontractors, investors, and agents of said person (for purposes of this Order, ''Cylinder Owners'').

Under no circumstances should a cylinder described in this emergency recall order be filled, refilled, or used for the transportation of hazardous materials.

**Effective Immediately, Lite Cylinder Must**

(1) Contact all Cylinder Owners to whom affected packagings have been

sold and inform them of the Emergency Recall Order and provide them the proper and necessary instruction and information for the safe handling and discharge of hazardous material and for the return shipment of cylinders no later than five business days of this Order. The information must include instruction that directs Cylinder Owners to use only qualified persons, trained in handling cylinders in accordance with Federal regulations, and to safely discharge, purge, and remove the valve from, the cylinder.

(2) Confirm that the returned cylinders are purged and emptied.

(3) Ensure that the purged and empty cylinders are returned to the manufacturer at the following address: The Lite Cylinder Company, 139 Southeast Parkway Court, Franklin, TN 37064.

(4) Provide by email the serial number of each returned cylinder to PHMSA at *specialpermits@dot.gov* (referencing ''Lite Cylinder'' in the subject line) by the close of business daily. Please note any problems that may have been witnessed with the cylinder (e.g. leakage, damage, etc.).

(5) Permanently obliterate the special permit specification markings and render them incapable of holding pressure within five business days of possession, including those in inventory.

**PHMSA Urgently Advises Cylinder Owners to**

(1) Take proper safeguards in identifying and handling the affected packagings identified in this Order,

(2) Use the instruction and information provided by Lite Cylinder for the safe handling and discharge of hazardous material and for the return shipment of cylinders. This information will guide Cylinder Owners to use only qualified persons, trained in handling cylinders in accordance with Federal regulations, and to safely discharge, purge, and remove the valve from, the cylinder.

(3) Return the purged and empty cylinders to the manufacturer at the following address: The Lite Cylinder Company, 139 Southeast Parkway Court, Franklin, TN 37064.

This Order is effective immediately and remains in effect unless withdrawn in writing by the Associate Administrator or his designee, or until it otherwise expires by operation of law.

**Information Gathering**

Any person who is aware of a failure or incident relating to any cylinder marked DOT–SP 14562, DOT–SP 13957, DOT–SP 13105; any cylinder requalified under H706; and other cylinder manufactured under M5729 is requested to contact PHMSA, as instructed in the Emergency Contact Official section below, as soon as possible. PHMSA requests information on all cylinders made under the foregoing special permits and approvals, which include 10-pound, 20-pound, 25-pound and 33-pound cylinders.

**Jurisdiction**

Lite Cylinder manufactures or has manufactured, marked, certified and sold composite cylinders as meeting DOT–SP 14562, DOT–SP 13957, and DOT–SP 13105; performed cylinder requalification under approval H706; and manufactured cylinders under Registration Number M5729, which are used to transport hazardous materials within the United States and therefore is a ''person,'' as defined by 49 U.S.C. 5102(9), and, a ''person'' under 1 U.S.C. 1. Accordingly, Lite Cylinder, or any person in possession of an affected packaging, is subject to the authority and jurisdiction of the Associate Administrator, including the authority to impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for hearing, to the extent necessary to abate the imminent hazard (49 U.S.C. 5121(d)).

**Background/Basis for Order**

On October 10, 2012, PHMSA suspended Lite Cylinder's special permits DOT–SP 14562, (and DOT–SP 13957 as authorized therein), and DOT–SP 13105, cylinder requalification approval H706 and manufacturer's Registration Number approval M5729, and proposed termination of the above approvals and special permits unless Lite Cylinder could show cause why such action should not be taken. Concurrent with this action today, PHMSA has terminated the above special permits and approvals for cylinder requalification, and manufacturer's Registration Numbers. Upon reliable and credible information received in the course of investigations, PHMSA has learned that Lite Cylinder has:

1. Failed to notify the Associate Administrator for Hazardous Materials Safety, in writing, of incidents involving DOT–SP 14562 cylinder failures, as required by DOT–SP 14562, Paragraph 12.

Paragraph 12 of DOT–SP 14562 requires the grantee to notify the Associate Administrator for Hazardous Materials Safety, in writing, of any incident involving a package (including a cylinder failure), shipment or operation conducted under the terms of the special permit. PHMSA discovered that Lite Cylinder failed to report three cylinder failures in service and one cylinder failure during production testing, in violation of DOT–SP 14562. PHMSA obtained (1) a copy of a settlement agreement Lite Cylinder entered into with Robert Nicholson on January 20, 2012 after a DOT–SP 14562 cylinder ruptured and damaged a gas grill in New Jersey, which Lite Cylinder's owner admitted was a result of a flaw in the seam, (2) signed employee statements regarding an injury to an Independent Inspection Authority (IIA) employee during a low pressure test at Lite Cylinder's facility, and (3) a report from Freudenberg Texbond regarding a cylinder that separated at their Macon, Georgia facility on September 7, 2012. Lite Cylinder employees also described a cylinder failure that injured several people in the Dominican Republic, which involved 33-pound DOT–SP 13957 cylinders.

In addition to the failures described above, PHMSA discovered that, from January 14, 2009 to September 25, 2012, approximately 19 cylinder owners had returned DOT–SP 14652 cylinders due to sidewall or bottom leaks. Lite Cylinder documented most of these returns in their complaint log, but failed to report them to PHMSA.

2. Failed to comply with PHMSA Notice of Suspension dated May 10, 2007, which required Lite Cylinder to cease the sales of all DOT–SP 13957 cylinders.

On May 10, 2007, the PHMSA issued a Notice of Suspension of DOT–SP 13957, which prohibited the manufacture and continued use of 33-pound DOT–SP 13957 cylinders. PHMSA's investigators obtained an Invoice # 2070, dated July 17, 2008, which shows that Lite Cylinder sold and shipped one thousand cylinders to Cocigas SA in Canabacos, Santiago Dominican Republic. The invoice listed the cylinders as ''33# Composite Lite Cylinder Complete'' and provided instructions on how to obtain a copy of DOT–SP 14562, the special permit that PHMSA issued which allowed resumed use of 10 pound and 20 pound DOT–SP 13957 cylinder under the authority of DOT–SP 14562 without remarking. Several Lite Cylinder employees, including Mr. Reifschneider, Lite Cylinder's President, provided signed statements saying that the cylinders sold to Cocigas were manufactured under DOT–SP 13957. Furthermore, PHMSA has obtained photographs showing that cylinders sold to Cocigas remained marked as DOT–SP cylinders. According to the statements, one of

these cylinders subsequently failed during transportation and injured several occupants of the transport vehicle.

3. Failed to test DOT–SP 14562 cylinders at the minimum test pressure of 480 psi as required by Paragraph 7.a.1 of the Fifth Revision issued on October 19, 2011.

On October 19, 2011, PHMSA granted Lite Cylinder's request for a 5th Revision to DOT–SP 14562, which increased the maximum service pressure for these cylinders to 320 psi and the minimum test pressure to 480 psi. Lite Cylinder's manufacturer's reports to PHMSA indicate that it has tested 11,416 DOT–SP 14562 cylinders at 441 psi since the 5th Revision became effective on October 19, 2011.

4. Failed to conduct cycle and burst testing at random intervals, as required by DOT–SP 14562, Paragraphs 7.a.10.ii–.iii.

DOT–SP 14562 requires cycle testing for one cylinder taken at random from each group of 1000 cylinders, and burst testing for one cylinder taken at random from each run of 200 cylinders or less. Lite Cylinder's records show that the company conducted all of the required cycle and burst tests at the beginning of each lot manufacturing process, rather than taking random samples.

5. Failed to manufacture DOT–SP 14562 cylinders in accordance with the Quality Systems Manual (QSM) on file with PHMSA's Permits and Approvals Division, as required by Paragraph 7.a of DOT–SP 14562.

PHMSA's review of Lite Cylinder's manufacturing records show that the company failed to follow the requirements of the QSM on file with PHMSA. Specifically, Lite Cylinder:

- Continued manufacturing DOT–SP 14562 cylinders after puck tests failed to meet the required hardness test limits;
- Failed to perform and document grinding wheel adjustments and inspections to ensure that the joiner was properly aligned and operating as required; and
- Failed to perform burst testing following a cylinder failure during the manufacturing process.

6. Failed to notify PHMSA of changes to its QSM as required by Paragraph 7.a of DOT–SP 14562.

DOT–SP 14562 required Lite Cylinder to manufacture cylinders in accordance with the QSM on file with PHMSA, and to provide written notice to PHMSA of any changes to the QSM. Lite Cylinder made significant changes to its QSM on February 14, 2008 (e.g. puck testing procedures, joiner maintenance requirements, resin and hardener flow metering), but never submitted the revisions to PHMSA.

7. Marked and sold ''DOT–SP 14562'' cylinders that were not designed and manufactured in conformance with TLCCI drawings D10DOT, D10DOTAS, D20DOT, D20DOTAS, DOT 33–100–D0001, DOT 33–100–D0002, DOT 33–100–D0003, DOT 33–D0004 on file with PHMSA's Office of Hazardous Materials Safety—Approvals and Permits as required by Paragraph 7.a of DOT–SP 14562.

On May 17, 2013, PHMSA discovered that a prototype cylinder manufactured by Lite Cylinder had separated circumferentially while in service powering a lawn mower. Upon further investigation, PHMSA discovered that Lite Cylinder had sold 40 similar cylinders marked as ''DOT–SP 14562'' to Onyx, a retailer in Stanley, North Carolina. On May 22, 2013, PHMSA obtained samples of the 29 composite cylinders delivered to Onyx, which included 20 pound, 2-hole cylinders, and discovered that the serial numbers for the sample cylinders corresponded to a 2-hole design classified as ''DC20 2 Hole'' in Lite Cylinder's master list of cylinders manufactured since 2007. There is no approved design drawing on file with PHMSA authorizing the 20 pound, 2-hole design.

PHMSA also obtained cylinders from Mesa, Arizona with a 10 pound, 3-hole design, that were marked ''DOT–SP 14562.'' There is no approved design drawing on file with PHMSA authorizing a 10 pound, 3-hole design.

Based on this evidence, PHMSA finds that Lite Cylinder marked, sold and offered for transportation unapproved cylinders in violation of Paragraph 7.a of DOT–SP 14562. This further demonstrates Lite Cylinder's pattern of making unilateral changes to its manufacturing process, quality control oversight, and cylinder designs without first seeking PHMSA's approval.

**Additional Unsafe Conditions and Practices**

During the September 28, 2012 inspection, PHMSA noted several equipment issues related to Lite Cylinder's production process. Lite Cylinder had installed an alarm and automatic shutdown device to stop manufacturing if the hardening catalyst required to chemically weld the cylinder seams was not being properly added during the gluing process. Several Lite Cylinder employees provided statements that the alarm and automatic shutdown process had never functioned as designed, and indicated that the shutdown device had not stopped the manufacturing process when it should have detected insufficient hardening catalyst.

PHMSA is also concerned about the increasing failure rate that Lite Cylinder's test reports indicate for DOT–SP 14562 cylinders. PHMSA's investigation revealed that in 2009, DOT–SP cylinders had a failure rate of 4%. From 2009–2012, that failure rate has doubled to 9.4%. This failure rate may have been even higher from October 19, 2011 to present if Lite Cylinder had been testing at 480 psi, as required by DOT–SP 14562, rather than the 441 psi at which they were testing. This trend toward higher failure rates has given PHMSA serious concerns regarding the safety of cylinders manufactured by Lite Cylinder. The following table summarizes failure rates by year and cylinder volume:

FAILURE RATES FOR DOT–SP 14562 CYLINDERS

| | 2009 (percent) | 2010 (percent) | 2011 (percent) | 2012 (percent) |
|---|---|---|---|---|
| 10 lb | 4 | 6 | 7 | 7 |
| 20 lb | 1 | 5 | 14 | 9 |
| 25 lb | 5 | 3 | 2 | N/A |
| 33 lb | N/A | 65 | 16 | 36 |
| Overall | 4 | 7 | 11 | 9.4 |

At the time of the suspension and proposal to terminate on October 10, 2012, Lite Cylinder had approximately 1,952 cylinders that were manufactured and marked prior to October 9, 2012. The company requested permission to sell these cylinders. To evaluate the level of safety of the cylinders and the approximately 55,000 currently in

service, PHMSA developed a testing protocol (Test Plan) to determine whether these cylinders met the prescribed designs and the minimum safety level. The Test Plan mandated pressure testing of each cylinder, and sample ambient cycle testing and environmental cycle testing of cylinders from each of the manufacturing lots represented. Cylinders subjected to the cycle tests were then put through the hydrostatic pressure test to burst.

Each cylinder was also subjected to a pneumatic pressure test at test pressure (1.5 x service pressure), followed by a pneumatic leak pressure test conducted at service pressure in a water bath. During the leak pressure test, leaks can be detected by bubbles leaving the cylinder. The leak pressure test ensures that the cylinder will not leak hazardous materials at the maximum charge pressure it will experience in service.

Of the 1,952 cylinders that Lite Cylinder had on hand, PHMSA concluded that approximately 804 were not manufactured in accordance with the hardness ''puck test'' requirements of DOT–SP 14562 and excluded these from testing. Of the 1,148 remaining cylinders that Lite Cylinder certified as meeting the special permit requirements, 53 leaked during the pneumatic leak pressure testing, demonstrating a failure rate of approximately 4.6% in violation of the requirements of DOT–SP 14562 and the QSM. These cylinders were previously tested during the manufacturing process, and Lite Cylinder certified them as meeting all requirements of the special permit. Therefore, the entire sample should have been leak-free.

PHMSA believes that the cylinders previously sold by Lite Cylinder, although tested during the manufacturing process, may also exhibit leakage in service. These cylinders are commonly used to contain flammable gas. PHMSA considers the risk of fire due to leaking DOT–SP 14562 cylinders containing flammable gas to be unacceptable. In order to avoid potential injury or damage, PHMSA is removing from service all DOT–SP 14562 cylinders.

**Finding of Imminent Hazard**

Based on the foregoing, PHMSA finds that (1) Lite Cylinder marked and sold ''DOT–SP 14562'' cylinders that were not designed and manufactured in conformance with approved design drawings on file with PHMSA, (2) DOT–SP 14562 cylinders have been involved in unreported cylinder failures resulting in at least one serious injury and property damage, (3) Lite Cylinder has failed to conduct required testing, maintain quality control procedures, and exhibited an increasing failure rate in its manufacture of DOT–SP 14562 cylinders, (4) Lite Cylinder has failed to detect and condemn leaking cylinders during its manufacturing process and has marked and offered leaking cylinders for transportation in commerce. Therefore, the forgoing violations and unsafe conditions and practices are presenting a substantial likelihood of severe personal injury or a substantial endangerment to health, property or the environment and constitute or are causing an imminent hazard to the public safety.

**Remedial Action**

In order to avoid any potential injury or damage, PHMSA is requiring the removal from service of all affected packagings. Effective immediately, Lite Cylinder must:

(1) Contact all Cylinder Owners to whom affected packagings have been sold and inform them of the Emergency Recall Order and provide them the proper and necessary instruction and information for the safe handling and discharge of hazardous material and for the return shipment of cylinders no later than five business days of this Order. The information must include instruction that directs Cylinder Owners to use only qualified persons, trained in handling cylinders in accordance with Federal regulations, and to safely discharge, purge, and remove the valve from, the cylinder.

(2) Confirm that the returned cylinders are purged and emptied.

(3) Ensure that the purged and empty cylinders are returned to the manufacturer at the following address: The Lite Cylinder Company, 139 Southeast Parkway Court, Franklin, TN 37064.

(4) Provide by email the serial number of each returned cylinder to PHMSA at *specialpermits@dot.gov* (referencing ''Lite Cylinder'' in the subject line) by the close of business daily. Please note any problems that may have been witnessed with the cylinder (e.g. leakage, damage, etc.).

(5) Permanently obliterate the special permit specification markings and render them incapable of holding pressure within five business days of possession, including those in inventory.

**Information Gathering**

Any person who is aware of a failure or incident relating to any cylinder marked DOT–SP 14562, DOT–SP 13957, DOT–SP 13105; any cylinder requalified under H706; and other cylinder manufactured under M5729 is requested to contact PHMSA, as instructed in the Emergency Contact Official section below, as soon as possible. PHMSA requests information on all cylinders made under the foregoing special permits and approvals, which include 10-pound, 20-pound, 25-pound and 33-pound cylinders,

**Rescission of this Order**

Before this order can be rescinded, Lite Cylinder must be able to demonstrate adequately to the Associate Administrator that you have taken actions to remedy the unsafe conditions and practices and that such actions taken have, in fact, resulted in an imminent hazard no longer existing. If Lite Cylinder is able to make such a demonstration, the Associate Administrator will issue a Rescission Order

**Failure to Comply**

Any person failing to comply with this Emergency Recall Order is subject to civil penalties of up to $175,000 for each violation or for each day they are found to be in violation (49 U.S.C. 5123). A person violating this Emergency Recall Order is also subject to criminal prosecution, which may result in fines under title 18, imprisonment of up to ten years, or both (49 U.S.C. 5124).

**Right to Review**

Any person to whom the Associate Administrator has issued an Emergency Recall Order is entitled to review of the order pursuant to 49 U.S.C. 5121(d)(3) and in accordance with section 554 of the Administrative Procedure Act (APA), 5 U.S.C. 500 *et seq*. Any petition seeking relief must be filed within 20 calendar days of the date of this order (49 U.S.C. 5121(d)(3)), and include one copy addressed to the Chief Safety Officer (CSO) for the Pipeline and Hazardous Materials Safety Administration, United States Department of Transportation, 1200 New Jersey Avenue SE., Washington DC 20590–0001 (ATTENTION: Office of Chief Counsel) (electronically to *PHMSACHIEFCOUNSEL@DOT.GOV*) and one copy addressed to U.S. DOT Dockets, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590 (*http://Regulations.gov* under Docket #PHMSA–2013–0123). Furthermore, a petition for review must state the material facts at issue which the petitioner believes dispute the existence of an imminent hazard and must include all evidence and exhibits to be considered. The petition must also state

the relief sought. Within 30 days from the date the petition for review is filed, the CSO must approve or deny the relief in writing; or find that the imminent hazard continues to exist, and extend the original Emergency Recall Order. In response to a petition for review, the CSO may grant the requested relief in whole or in part; or may order other relief as justice may require (including the immediate assignment of the case to the Office of Hearings for a formal hearing on the record).

In order to request a formal hearing in accordance with 5 U.S.C. 554, the petition must state that a formal hearing is requested, and must identify the material facts in dispute giving rise to the request for a hearing. A petition which requests a formal hearing must include an additional copy addressed to the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, M–20, Room E12–320, 1200 New Jersey Avenue SE., Washington, DC 20590 (FAX: (202) 366–7536).

**Emergency Contact Official**

If you have any questions concerning this Emergency Restriction/Prohibition Order you should contact John Heneghan, Regional Director, at (404) 832–1140, *john.heneghan@dot.gov,* or 233 Peachtree Street, Suite 602, Atlanta, GA 30303 or Aaron Mitchell, Director Field Services Support, at (202) 366–4455, *aaron.mitchell@dot.gov* or 1200 New Jersey Avenue SE., Washington, DC 20590.

Issued in Washington, DC, on May 31, 2013.

**Magdy El-Sibaie,**

*Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.*

[FR Doc. 2013–13354 Filed 6–5–13; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 33 (Sub-No. 283X)]**

### Union Pacific Railroad Company—Abandonment Exemption—In Iron County, Utah

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* for UP to abandon the Cedar City Subdivision from milepost 30.80 to the end of the line at milepost 31.83 in Cedar City, a total distance of 1.03 miles in Iron County, Utah (the Line). The Line traverses United States Postal Service Zip Code 84721.

UP has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 6, 2013, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 17, 2013. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 26, 2013, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., 101 North Wacker Drive, #1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by June 11, 2013. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by June 6, 2014, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: June 3, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Derrick A. Gardner,**

*Clearance Clerk.*

[FR Doc. 2013–13412 Filed 6–5–13; 8:45 am]

**BILLING CODE 4915–01–P**

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2 (f)(25).

## DEPARTMENT OF THE TREASURY

### Proposed Collection; Comment Request; Office of Financial Stability

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Financial Stability within the Department of the Treasury is soliciting

comments concerning the Troubled Asset Relief Program—Capital Purchase Program (CPP) Use of Funds Survey.

**DATES:** Comments must be received on or before August 5, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to the Department of the Treasury, Departmental Offices, Office of Financial Stability, ATTN: Tracy Rogers, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 927–8868.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to the Department of the Treasury, Departmental Offices, OFS, ATTN: Tracy Roger, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 927–8868.

**SUPPLEMENTARY INFORMATION:**

*Title:* Troubled Asset Relief Program—Capital Purchase Program (CPP) Use of Funds Survey.

*OMB Number:* 1505–0222.

*Abstract:* Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), the Department of the Treasury has implemented several aspects of the Troubled Asset Relief Program (TARP). The TARP includes several components including a voluntary Capital Purchase Program (CPP) under which the Department has purchased qualifying capital in U.S. banking organizations. The CPP is an important part of the Department's efforts to restore confidence in our financial system and ensure that credit continues to be available to consumers and businesses. As an essential part of restoring confidence, the Treasury has committed to determining the effectiveness of the CPP. Additionally, American taxpayers are particularly interested in knowing how banks have used the money that Treasury has invested through the CPP. Consequently, the Treasury is seeking responses from banking institutions that have received CPP funds regarding: How the CPP investment has affected the banks' operations, how these institutions have used CPP funds, and how their usage of CPP funds has changed over time.

*Type of Review:* Extension without change of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Annual Respondents:* 640.

*Estimated Number of Annual Responses per Respondent:* 1.0.

*Estimated hours per response:* 80.

*Estimated Total Annual Burden Hours:* 51,200.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2013.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2013–13429 Filed 6–5–13; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Fiscal Service

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Subscription For Purchase and Issue of U.S. Treasury Securities, State and Local Government Series.

**DATES:** Written comments should be received on or before August 6, 2013 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Fiscal Service, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

**SUPPLEMENTARY INFORMATION:**

*Title:* Subscription For Purchase and Issue of U.S. Treasury Securities, State and Local Government Series.

*OMB Number:* 1535–0092.

*Form Number:*

PD F 4144—Subscription for Purchase and Issuing of U.S. Securities State and Local Government Series Time Deposits.

PD F 4144–1—Account Information for U.S. Treasury Securities State and Local Government Series Time Deposits.

PD F 4144–2—Schedule of U.S. Treasury Securities State and Local Government Series Time Deposits.

PD F 4144–5—Application for Internet Access—U.S. Treasury Securities State and Local Government Series.

PD F 4144–6—SLGSafe User Acknowledgement.

PD F 4144–7—SLGSafe Template Worksheet.

*Abstract:* The information is requested to establish and maintain accounts for the owners of securities of the State and Local Government Series.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* State and Local Government.

*Estimated Number of Respondents:* 6,708.

*Estimated Time per Respondent:* 24 minutes.

*Estimated Total Annual Burden Hours:* 2,713.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Dated: June 3, 2013.

**Bruce A. Sharp,**

*Bureau Clearance Officer.*

[FR Doc. 2013–13443 Filed 6–5–13; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

## Community Development Financial Institutions Fund

## Notice of Funding Availability (NOFA) Inviting Applications for the FY 2013 Funding Round of the Bank Enterprise Award (BEA) Program

*Announcement Type:* Announcement of funding opportunity.

Catalog Of Federal Domestic Assistance (CFDA) Number: 21.021.

**DATES:** Applications for the FY 2013 funding round of the BEA Program must be received by July 12, 2013. Applications must meet all eligibility and other requirements and deadlines, as applicable, set forth in this NOFA. Applications received after July 12, 2013 will be rejected.

*Executive Summary:* This NOFA is issued in connection with the FY 2013 funding round of the BEA Program. The BEA Program is administered by the Community Development Financial Institutions (CDFI) Fund, a wholly owned government corporation within the Department of the Treasury. The BEA Program encourages Insured Depository Institutions to increase their levels of loans, investments, services, and technical assistance within Distressed Communities, and financial assistance to CDFIs through equity investments, equity-like loans, grants, stock purchases, loans, deposits, and other forms of financial and technical assistance, during a specified period.

### I. Funding Opportunity Description

A. *Baseline Period and Assessment Period dates:* A BEA Program Award is based on an Applicant's increases in Qualified Activities from the Baseline Period to the Assessment Period. For the FY 2013 funding round, the Baseline Period is calendar year 2011 (January 1, 2011 through December 31, 2011), and the Assessment Period is calendar year 2012 (January 1, 2012 through December 31, 2012). If Qualified Activities in a specific category results in a decrease in activity from the Baseline Period to the Assessment Period, there is no need to report the activity.

B. *Program regulations:* The regulations governing the BEA Program can be found at 12 CFR part 1806 (the Interim Rule) and provide guidance on evaluation criteria and other requirements of the BEA Program. The CDFI Fund encourages Applicants to review the Interim Rule. Detailed BEA Program requirements are also found in the Application related to this NOFA. Each capitalized term in this NOFA is more fully defined either in the Interim Rule or the Application.

C. *Qualified Activities:* Qualified Activities are defined in the Interim Rule to include CDFI Related Activities, Distressed Community Financing Activities, and Service Activities (12 CFR 1806.103). CDFI Related Activities (12 CFR 1806.103(q)) include Equity Investments, Equity-Like Loans, and CDFI Support Activities). Distressed Community Financing Activities (12 CFR 1806.103(u)) include Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; and Small Business Loans and related Project Investments. Service Activities (12 CFR 1806.103(nn)) include Deposit Liabilities, Financial Services, Community Services, Targeted Financial Services, and Targeted Retail Savings/Investment Products.

When calculating BEA Program Award amounts, the CDFI Fund will only consider the amount of Qualified Activity that has been fully disbursed, or in the case of partially disbursed Qualified Activities will only consider the amount that an Applicant reasonably expects to disburse for a Qualified Activity within 12 months from the end of the Assessment Period. Subject to the requirements outlined in Section VII. B.1. of this NOFA, in the case of Commercial Real Estate Loans and related Project Investments, the total principal amount of the transaction must be $10 million or less to be considered a Qualified Activity. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review.

Activities funded with prior BEA Award dollars, or funded to satisfy requirements of a BEA Award Agreement from a prior Award shall not constitute a Qualified Activity for the purposes of calculating or receiving an Award.

D. *Designation of Distressed Community:* Each CDFI Partner that is the recipient of CDFI Support Activities from an Applicant must designate a Distressed Community. CDFI Partners that receive Equity Investments are not required to designate Distressed Communities. Applicants applying for a BEA Program Award for carrying out Distressed Community Financing Activities or Service Activities must verify that addresses of both Baseline and Assessment Period activities are in Distressed Communities when completing their Application. Please note that a Distressed Community as defined by the BEA Program is not necessarily the same as an Investment Area as defined by the CDFI Program or a Low-Income Community as defined by the New Markets Tax Credit (NMTC) Program.

1. *Definition of Distressed Community:* A Distressed Community must meet certain minimum geographic area and distress requirements, which are defined in the Interim Rule at 12 CFR 1806.103(t) and more fully described in 12 CFR 1806.200. Applicants should use CIMS to determine whether a Baseline Period activity or Assessment Period activity is located in a qualifying Distressed Community.

2. *Designation of Distressed Community:* A CDFI Partner (as appropriate) shall designate an area as a Distressed Community by:

(a) selecting Geographic Units which individually meet the minimum area eligibility requirements; or

(b) selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (1) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

A CDFI Partner designates a Distressed Community by submitting a map of the Distressed Community as described in the BEA Program Application. CDFI Partners must use CIMS to designate Distressed Communities. CIMS is accessed through *myCDFIFund* and contains step-by-step instructions on how to create and save the aforementioned map of the Distressed Community. *myCDFIFund* is an electronic interface that is accessed through the CDFI Fund's Web site (*www.cdfifund.gov*). Instructions for registering with *myCDFIFund* are available on the CDFI Fund's Web site. If you have any questions or problems with registering, please contact the CDFI Fund IT HelpDesk by telephone at (202) 653–0300, or by email to *ITHelpDesk@cdfi.treas.gov.*

3. *Persistent Poverty Counties:* In FY 2012, Congress mandated that at least ten percent of the CDFI Fund's appropriations be directed to counties

that meet the criteria for ''Persistent Poverty'' designation. This Persistent Poverty Counties (PPC) requirement continues under the current Continuing Resolution for FY 2013 appropriations. PPCs are defined as any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and the 2010 American Community Survey census. The specific counties that qualify as meeting the criteria for ''persistent poverty'' can be found at: *www.cdfifund.gov/persistentpoverty.* Applicants that apply under this NOFA will be required to indicate the minimum and maximum percentage of the BEA Award that the Applicant will commit to investing in PPCs.

**II. Award Information**

A. *CDFI Applicants:* No CDFI Applicant may receive a FY 2013 Bank Enterprise Award if it has: (1) An application pending for assistance under the FY 2013 round of the Community Development Financial Institutions Program (CDFI Program); (2) Been awarded assistance from the CDFI Fund under the CDFI Program within the 12-month period prior to the date the CDFI Fund selects the Applicant to receive a FY 2013 Bank Enterprise Award; or (3) Ever received assistance under the CDFI Program for the same activities for which it is seeking a FY 2013 Bank Enterprise Award. Please note that Applicants may apply for both a CDFI Program Award and a BEA Program Award in FY 2013; however, receiving a FY 2013 CDFI Program award removes an Applicant from eligibility for a FY 2013 BEA Program Award.

B. *Award amounts:* The CDFI Fund expects that it may award approximately $17.1 million in FY 2013 BEA Program Awards, in appropriated funds under this NOFA. The CDFI Fund reserves the right to award in excess of said funds under this NOFA, provided that the appropriated funds are available. The CDFI Fund reserves the right to impose a maximum Award amount; however under no circumstances will an Award be higher than $2 million for any Awardee. The CDFI Fund also reserves the right to impose a minimum Award amount due to availability of funds. Further, the CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA. The CDFI Fund reserves the right to reallocate funds from the amount that is anticipated to be available under this NOFA to other CDFI Fund programs, or reallocate remaining funds to a future BEA Program funding round, if the CDFI Fund determines that the number of Awards made under this NOFA is fewer than projected.

When calculating Award amounts, the CDFI Fund will only consider the amount of the Qualified Activity that has been fully disbursed, or in the case of partially disbursed Qualified Activities will only consider the amount that an Applicant reasonably expects to disburse for a Qualified Activity within 12 months from the end of the Assessment Period.

C. *Types of Awards:* BEA Program Awards are made in the form of grants.

D. *Notice of Award and Award Agreement:* Each Awardee under this NOFA must sign a Notice of Award and an Award Agreement prior to disbursement by the CDFI Fund of the Award proceeds. The Notice of Award and the Award Agreement contains the terms and conditions of the Award. For further information, see Section VIII of this NOFA.

**III. Eligibility**

A. *Eligible Applicants:* Eligible Applicants for the BEA Program must be Insured Depository Institutions, as defined in Section 3 of the Federal Deposit Insurance Act 12 U.S.C. 1813(c)(2). An Applicant must be FDIC-insured as of December 31, 2012 for the FY 2013 funding round to be eligible for consideration for a BEA Program Award under this NOFA. The depository institution holding company of an Insured Depository Institution may not apply on behalf of an Insured Depository Institution. Applications received from depository institution holding companies will be disqualified. For the purposes of this NOFA, an eligible CDFI Applicant is an Insured Depository Institution that was certified as a CDFI as of the end of the applicable Assessment Period and maintains its status as a certified CDFI at the time BEA Program Awards are announced under this NOFA. Please note that all CDFIs originally or most recently certified prior to February 1, 2010 must have applied to the CDFI Fund for recertification no later than 11:59 p.m. EDT April 8, 2013 and be fully recertified by the time that BEA Program Awards are announced under this NOFA. Additional information regarding the mandatory CDFI recertification requirements can be found at: *www.cdfifund.gov/cdficert*

The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant, if the Applicant is delinquent on any federal debt.

1. *Prior Awardees:* Applicants must be aware that success in a prior round of any of the CDFI Fund's programs is not indicative of success under this NOFA. For purposes of this section, the CDFI Fund will consider an Affiliate to be any entity that Controls (as such term is defined in paragraph (f) below) the Applicant, is Controlled by the Applicant or is under common Control with the Applicant (as determined by the CDFI Fund) and any entity otherwise identified as an affiliate by the Applicant in its Application under this NOFA. Prior BEA Program Awardees and prior Awardees of other CDFI Fund programs are eligible to apply under this NOFA, except as follows:

(a) *Failure to meet reporting requirements:* The CDFI Fund will not consider an Application submitted by an Applicant if the Applicant or its Affiliate is a prior CDFI Fund awardee or allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, or allocation agreement(s), as of the Application deadline(s) stated in this NOFA. Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete and therefore met reporting requirements.

(b) *Pending resolution of noncompliance:* If an Applicant that is a prior awardee or allocatee under any CDFI Fund program: (i) Has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement, and (ii) the CDFI Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award, or allocation agreement, the CDFI Fund will consider the Applicant's Application under this NOFA pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance.

(c) *Default status:* The CDFI Fund will not consider an Application submitted by an Applicant that is a prior CDFI Fund awardee or allocatee under any CDFI Fund program if, as of the applicable Application deadline of this NOFA, the CDFI Fund has made a final determination that such Applicant is in default of a previously executed assistance, award or allocation agreement(s). Such entities will be ineligible to apply for an Award pursuant to this NOFA so long as the Applicant's prior award or allocation

remains in default status or such other time period as specified by the CDFI Fund in writing.

(d) *Undisbursed funds:* For the purposes of this section, the term ''undisbursed funds'' is defined as: (i) In the case of prior BEA Program Award(s), any balance of Award funds equal to or greater than five percent of the total prior BEA Program Award(s) that remains undisbursed more than three years after the end of the calendar year in which the CDFI Fund signed an Award Agreement with the Awardee, or (ii) in the case of prior CDFI Program or other CDFI Fund program award(s), any balance of award funds equal to or greater than five percent of the total prior award(s) that remains undisbursed more than two years after the end of the calendar year in which the CDFI Fund signed an assistance agreement with the awardee.

The term ''undisbursed funds'' does not include (i) tax credit allocation authority allocated through the New Markets Tax Credit Program; (ii) any award funds for which the CDFI Fund received a full and complete disbursement request from the awardee as of the Application deadline of this NOFA; or (iii) any award funds for an award that has been terminated, expired, rescinded, or deobligated by the CDFI Fund.

The CDFI Fund will not consider an Application submitted by an Applicant that is a prior CDFI Fund awardee under any CDFI Fund program if the Applicant has a balance of undisbursed funds under said prior award(s), as of the Application deadline of this NOFA. Further, an entity is not eligible to apply for an Award pursuant to this NOFA if an Affiliate of the Applicant is a prior CDFI Fund awardee under any CDFI Fund program, and has a balance of undisbursed funds under said prior Award(s), as of the Application deadline of this NOFA. In the case where an Affiliate of the Applicant is a prior CDFI Fund awardee under any CDFI Fund program, and has a balance of undisbursed funds under said prior award(s), as of the Application deadline of this NOFA, the CDFI Fund will include the combined awards of the Applicant and such Affiliates when calculating the amount of undisbursed funds.

(e) *Control:* For purposes of this NOFA, the term ''Control'' means: (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting securities as defined in 12 CFR 1805.104(mm) of any legal entity, directly or indirectly or acting through one or more other persons; (2) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any legal entity; or (3) the power to exercise, directly or indirectly, a controlling influence over the management, credit, or investment decisions, or policies of any legal entity.

(f) *Contact the CDFI Fund:* Accordingly, Applicants that are prior awardees and/or allocatees under any CDFI Fund program are advised to: (i) Comply with requirements specified in assistance, award and/or allocation agreement(s), and (ii) contact the CDFI Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balance of a prior award(s). An Applicant that is unsure about the disbursement status of any prior award should contact the CDFI Fund by sending an email to *cdfihelp@cdfi.treas.gov.* All outstanding reports and compliance questions should be directed to Certification, Compliance Monitoring, and Evaluation support by email at *ccme@cdfi.treas.gov* or by telephone at (202) 653–0421. The CDFI Fund will respond to Applicants' reporting, compliance, or disbursement questions between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOFA through July 10, 2013. The CDFI Fund will not respond to Applicants' reporting, compliance, or disbursement telephone calls or email inquiries that are received after 5:00 p.m. ET on July 10, 2013 until after the Application deadline. The CDFI Fund will respond to technical issues related to myCDFIFund Accounts through 5:00 p.m. ET on July 12, 2013.

2. *Cost sharing and matching fund requirements:* Not applicable.

## IV. Application and Submission Information

A. *Application Content Requirements:* Detailed Application content requirements are found in the Application related to this NOFA. Applicants must submit all materials described in and required by the Application by the applicable deadlines. Additional information, including instructions relating to the submission of the Application via Grants.gov, the FY 2013 BEA Signature Page via myCDFIFund, and supporting documentation, is set forth in further detail in the Application.

Please note that, pursuant to OMB guidance (68 FR 38402), each Applicant must provide, as part of its Application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each Application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the EIN. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. EINs and DUNS numbers must match the information in the Applicant's System for Award Management (SAM) account. An active SAM account is required to submit Applications via Grants.gov. Neither the SAM account, EIN, nor the DUNS number can be that of the depository institution holding company of the Applicant. An Application that does not include an EIN or DUNS number is incomplete and cannot be transmitted to the CDFI Fund. The preceding sentences do not limit the CDFI Fund's ability to contact an Applicant for the purpose of confirming or clarifying information regarding a DUNS number or EIN. Once an Application is submitted, the Applicant will not be allowed to change any element of the Application.

As set forth in further detail in the Application, any Qualified Activity missing the required documentation will be disqualified. Applicants will not be allowed to submit missing documentation for Qualified Activities after the Application deadline.

B. *Form of Application Submission:* Applicants must submit Applications under this NOFA via Grants.gov with certain required documentation via paper according to the instructions in the Application. Applications sent by facsimile or by email will not be accepted, except in circumstances that the CDFI Fund, in its sole discretion, deems acceptable. In order to submit an Application via Grants.gov, Applicants must complete a multi-step registration process. This includes registration at *www.sam.gov.* Applicants are advised to make sure their SAM account is active and valid well in advance of submitting an Application via Grants.gov and to allow ample time to complete the entire registration and submission process prior to the application deadline of July 12, 2013.

myCDFIFund Accounts: All Applicants and CDFI Partners must complete a FY 2013 BEA Signature Page in myCDFIFund. All Applicants and CDFI Partners must register User and Organization accounts in myCDFIFund, the CDFI Fund's Internet-based interface, by the applicable Application deadline. Failure to register and complete a FY 2013 BEA Signature Page in myCDFIFund could result in the CDFI Fund being unable to accept the Application. As myCDFIFund is the

CDFI Fund's primary means of communication with Applicants and awardees, institutions must make sure that they update their contact information in their myCDFIFund accounts. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

Qualified Activity documentation and other attachments as specified in the applicable BEA Program Application must be sent to: Bureau of the Public Debt Warehouse & Operations Center Dock 1; 257 Bosley Industrial Park Drive; Parkersburg, WV 26101; ATTN: CDFI Fund—BEA Program Awards Management, A3–H. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–8071. The CDFI Fund will not accept Applications in its office in Washington, DC. Applications and attachments received in the CDFI Fund's Washington, DC, office will be rejected.

C. *Application Deadlines:* The deadline for receipt of Applications via Grants.gov for the FY 2013 funding round is 11:59 p.m. ET on July 12, 2013. The deadline for the submission of the FY 2013 BEA Signature Page via myCDFIFund for the FY 2013 funding round is 5:00 p.m. ET on July 12, 2013. The deadline for receipt of paper documentation at the Bureau of Public Debt address specified above is 5:00 p.m. ET, July 16, 2013. Applications and other required documents and other attachments received after the deadline on the applicable date will be rejected. Please note that the document submission deadlines in this NOFA and the funding Application are strictly enforced. The CDFI Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers, or overnight delivery services.

D. *Paperwork Reduction Act:* Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. Pursuant to the Paperwork Reduction Act, the BEA Program funding Application has been assigned the following control number: 1559–0005.

**V. Intergovernmental Review**

Not Applicable.

**VI. Funding Restrictions**

Not Applicable.

**VII. Application Review Information**

A. *CDFI Related Activities:* CDFI Related Activities include Equity Investments, Equity-Like Loans, and CDFI Support Activities provided to eligible CDFI Partners. In addition to regulatory requirements, this NOFA provides the following:

1. *Eligible CDFI Partner:* CDFI Partner is defined as a CDFI that has been provided assistance in the form of CDFI Related Activities by an Applicant (12 CFR 1806.103(p)). For the purposes of this NOFA, an eligible CDFI Partner is an entity that has been certified as a CDFI as of the end of the applicable Assessment Period and is Integrally Involved in a Distressed Community.

2. *Integrally Involved:* Integrally Involved is defined as having provided: (i) At least 10 percent of financial transactions or dollars transacted (e.g., loans or equity investments as defined in 12 CFR 1805.104(t)), or 10 percent of Development Service activities (as defined in 12 CFR 1805.104(s)), in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, in each of the three calendar years preceding the date of the applicable NOFA, (ii) having transacted at least 25 percent of financial transactions (e.g., loans or equity investments) in said Distressed Community in at least one of the three calendar years preceding the date of the applicable NOFA, or (iii) demonstrated that it has attained at least 10 percent of market share for a particular product in said Distressed Community (such as at least 10 percent of home mortgages originated in said Distressed Community) in at least one of the three calendar years preceding the date of the applicable NOFA.

3. *Limitations on eligible Qualified Activities provided to certain CDFI Partners:* A CDFI Applicant cannot receive credit for any financial assistance or Qualified Activities provided to a CDFI Partner that is also an FDIC-insured depository institution or depository institution holding company.

4. *Certificates of Deposit:* Section 1806.103(r) of the Interim Rule states that any certificate of deposit (CD) placed by an Applicant or its Subsidiary in a CDFI Partner that is a bank, thrift, or credit union must be: (i) Uninsured and committed for at least three years; or (ii) insured, committed for a term of at least three years, and provided at an interest rate that is materially below market rates, in the determination of the CDFI Fund.

(a) For purposes of this NOFA, ''materially below market interest rate'' is defined as an annual percentage rate that does not exceed 100 percent of yields on Treasury securities at constant maturity as interpolated by Treasury from the daily yield curve and available on the Treasury Web site at *www.treas.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml.* For example, for a three-year CD, Applicants should use the three-year rate U.S. Government securities, Treasury Yield Curve Rate posted for that business day. The Treasury updates the Web site daily at approximately 5:30 p.m. ET. CDs placed prior to that time may use the rate posted for the previous business day. The annual percentage rate on a CD should be compounded quarterly, semi-annually, or annually. If a variable interest rate is used, the CD must also have an interest rate that is materially below the market interest rate over the life of the CD, in the determination of the CDFI Fund. (b) For purposes of this NOFA, a deposit placed by an Applicant directly with a CDFI Partner that participates in a deposit network or service may be treated as eligible under this NOFA if it otherwise meets the criteria for deposits in 1806.103(r) and the CDFI Partner retains the full amount of the initial deposit or an amount equivalent to the full amount of the initial deposit through a deposit network exchange transaction.

5. *Equity Investment:* An Equity Investment means financial assistance in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the CDFI Fund provided by an Applicant or its Subsidiary to a CDFI Partner that meets the criteria set forth in the applicable NOFA.

6. *Equity-Like Loan:* An Equity-Like Loan is a loan provided by an Applicant or its Subsidiary to a CDFI Partner, and made on such terms that it has characteristics of an Equity Investment, as such characteristics may be specified by the CDFI Fund (12 CFR 1806.103(z)). For purposes of this NOFA, an Equity-Like Loan must meet the following characteristics:

(a) At the end of the initial term, the loan must have a definite rolling maturity date that is automatically extended on an annual basis if the CDFI borrower continues to be financially sound and carry out a community development mission;

(b) Periodic payments of interest and/or principal may only be made out of the CDFI borrower's available cash flow after satisfying all other obligations;

(c) Failure to pay principal or interest (except at maturity) will not automatically result in a default of the loan agreement; and

(d) The loan must be subordinated to all other debt except for other Equity-Like Loans.

Notwithstanding the foregoing, the CDFI Fund reserves the right to determine, in its sole discretion and on a case-by-case basis, whether an instrument meets the above-stated characteristics of an Equity-Like Loan.

7. *CDFI Support Activity:* A CDFI Support Activity is defined as assistance provided by an Applicant or its Subsidiary to a CDFI Partner, in the form of a loan, technical assistance, or deposits.

8. *CDFI Program Matching Funds:* Equity Investments, Equity-Like Loans, and CDFI Support Activities (except technical assistance) provided by a BEA Applicant to a CDFI and used by the CDFI for matching funds under the CDFI Program are eligible as a Qualified Activity under the CDFI Related Activity category.

B. Distressed Community Financing Activities and Service Activities: Distressed Community Financing Activities include Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments, Education Loans, Commercial Real Estate Loans and related Project Investments, Home Improvement Loans, and Small Business Loans and related Project Investments (12 CFR 1806.103(u)). In addition to the regulatory requirements, this NOFA provides the following additional requirements:

1. *Commercial Real Estate Loans and related Project Investments:* For purposes of this NOFA, eligible Commercial Real Estate Loans (12 CFR 1806.103(l)) and related Project Investments (12 CFR 1806.103(ll)) are generally limited to transactions with a total principal value of $10 million or less. Notwithstanding the foregoing, the CDFI Fund, in its sole discretion, may consider transactions with a total principal value of over $10 million, subject to review. For such transactions, Applicants must provide a separate narrative, or other information, to demonstrate that the proposed project offers, or significantly enhances the quality of, a facility or service not currently provided to the Distressed Community.

2. *Reporting certain Financial Services:* The CDFI Fund will value the administrative cost of providing certain Financial Services using the following per unit values:

(a) $100.00 per account for Targeted Financial Services;

(b) $50.00 per account for checking and savings accounts that do not meet the definition of Targeted Financial Services;

(c) $5.00 per check cashing transaction;

(d) $25,000 per new ATM installed at a location in a Distressed Community;

(e) $2,500 per ATM operated at a location in a Distressed Community;

(f) $250,000 per new retail bank branch office opened in a Distressed Community; and

(g) In the case of Applicants engaging in Financial Services activities not described above, the CDFI Fund will determine the unit value of such services.

(i) When reporting the opening of a new retail bank branch office, the Applicant must certify that it has not operated a retail branch in the same Distressed Community in which the new retail branch office is being opened in the past three years, and that such new branch will remain in operation for at least the next five years.

(ii) Financial Service Activities must be provided by the Applicant to Low- and Moderate-Income Residents. An Applicant may determine the number of Low- and Moderate-Income individuals who are recipients of Financial Services by either: (i) Collecting income data on its Financial Services customers, or (ii) certifying that the Applicant reasonably believes that such customers are Low- and Moderate-Income individuals and providing a brief analytical narrative with information describing how the Applicant made this determination. Citations must be provided for external sources. In addition, if external sources are referenced in the narrative, the Applicant must explain how it reached the conclusion that the cited references are directly related to the Low- and Moderate-Income residents to whom it is claiming to have provided the Financial Services.

(iii) When reporting changes in the dollar amount of deposit accounts, only calculate the net change in the total dollar amount of eligible Deposit Liabilities between the Baseline Period and the Assessment Period. Do not report each individual deposit. If the net change between the Baseline Period and Assessment Period is a negative dollar amount, then a negative dollar amount may be recorded for Deposit Liabilities only. Instructions for determining the net change is available in the Supplemental Guidance to the FY 2013 BEA Program Application.

C. *Priority Factors:* Priority Factors are the numeric values assigned to individual types of activity within: (i) The Distressed Community Financing, and (ii) Services categories of Qualified Activities. For the purposes of this NOFA, Priority Factors will be based on the Applicant's asset size as of the end of the Assessment Period (December 31, 2012) as reported by the Applicant in the Application. Asset size classes (i.e., small banks, intermediate-small banks, and large banks) will correspond to the Community Reinvestment Act (CRA) asset size classes set by the three Federal bank regulatory agencies and that were effective as of the end of the Assessment Period. The Priority Factor works by multiplying the change in a Qualified Activity by the assigned Priority Factor to achieve a ''weighted value.'' This weighted value of the change would be multiplied by the applicable Award percentage to yield the Award amount for that particular activity. For purposes of this NOFA, the CDFI Fund is establishing Priority Factors based on Applicant asset size to be applied to all activity within the Distressed Community Financing Activities and Service Activities categories only, as follows:

| CRA Asset size classification | Priority factor |
|---|---|
| Small banks (assets of less than $296 million as of 12/31/2012) | 5.0 |
| Intermediate—small banks (assets of at least $296 million but less than $1.186 billion as of 12/31/2012) | 3.0 |
| Large banks (assets of $1.186 billion or greater as of 12/31/2012) | 1.0 |

D. *Certain Limitations on Qualified Activities:*

1. Low-Income Housing Tax Credits. Financial assistance provided by an Applicant for which the Applicant receives benefits through Low-Income Housing Tax Credits, authorized pursuant to Section 42 of the Internal Revenue Code, as amended (26 U.S.C. 42), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the purposes of calculating or receiving a Bank Enterprise Award.

2. New Markets Tax Credits. Financial assistance provided by an Applicant for which the Applicant receives benefits as an investor in a Community Development Entity that has received an allocation of New Markets Tax Credits, authorized pursuant to Section 45D of the Internal Revenue Code, as amended (26 U.S.C. 45D), shall not constitute an Equity Investment, Project Investment, or other Qualified Activity, for the

purposes of calculating or receiving a Bank Enterprise Award. Leverage loans used in New Markets Tax Credit structured transactions that meet the requirements outlined in the applicable NOFA are considered Distressed Community Financing Activities.

3. Loan Renewals and Refinances. Financial assistance provided by an Applicant shall not constitute a Qualified Activity, as defined in this part, for the purposes of calculating or receiving a Bank Enterprise Award if such financial assistances consists of a loan to a borrower that has matured and is then renewed by the Applicant, or consists of a loan to a borrower that is retired or restructured using the proceeds of a new commitment by the Applicant. Payoff of a separate third party obligation will only be considered a Qualified Activity if the payoff of a transaction is part of the sale of property or business to an unaffiliated party to the borrower. Applicants should include a narrative statement to describe any such transactions. Otherwise the transaction will be disqualified.

4. Prior BEA Awards. Qualified Activities funded with prior funding round Bank Enterprise Award dollars or funded to satisfy requirements of the BEA Program Award Agreement shall not constitute a Qualified Activity for the purposes of calculating or receiving a Bank Enterprise Award.

5. Prior CDFI Program Awards. No CDFI Applicant may receive a Bank Enterprise Award for activities funded by a CDFI Program Award.

E. *Award percentages, Award amounts, selection process:* The Interim Rule describes the process for selecting Applicants to receive Bank Enterprise Awards and determining Award amounts. Applicants will calculate and request an estimated Award amount in accordance with a multi-step procedure that is outlined in the Interim Rule (at 12 CFR 1806.202). As outlined in the Interim Rule at 12 CFR§ 1806.203, the CDFI Fund will determine actual Award amounts based on the availability of funds, increases in Qualified Activities from the Baseline Period to the Assessment Period, and each Applicant's priority ranking. In calculating the increase in Qualified Activities, the CDFI Fund will determine the eligibility of each transaction for which an Applicant has applied for a Bank Enterprise Award. In some cases, the actual Award amount calculated by the CDFI Fund may not be the same as the estimated Award amount requested by the Applicant.

The CDFI Fund may take into consideration the views of the appropriate Federal bank regulatory agency, as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) and may choose not to approve a BEA Program Award to an Insured Depository Institution Applicant if the appropriate Federal bank regulatory agency indicates safety and soundness concerns about the Applicant. Furthermore, the CDFI Fund may choose not to approve a BEA Program Award for the following reasons if at the time of application: (i) The Applicant and/or its Affiliates most recent overall CRA assessment rating is below ''Satisfactory'', or (ii) the Applicant received a going concern opinion on its most recent audit. Applicants may be contacted to provide additional information related to Federal bank regulatory or CRA information.

Should the CDFI Fund determine, upon analysis of the final BEA Awardee pool, that it has not achieved the 10 percent persistent poverty requirement mandated by Congress, this information will affect the ranking of Applications and/or the size of an Award. In this case, to ensure that this Congressional mandate is achieved, Award preference will be given to Applicants that commit to targeting a minimum of 10 percent of Bank Enterprise Award dollars to be invested in BEA Qualified Activities in persistent poverty counties (PPCs). If an institution is selected to receive a Bank Enterprise Award through the FY 2013 funding round, the stated commitment to serving PPCs will be incorporated in the institution's Award agreement and performance goals. Awardees may be held to the minimum and up to the maximum PPC commitment articulated in its Application. No applicant, however, will be disqualified from consideration if it does not make a PPC commitment in its Bank Enterprise Award Program Application.

In the CDFI Related Activities category (except for an Equity Investment or Equity-Like Loan), for CDFI Applicants, such estimated Award amount will be equal to 18 percent of the increase in Qualified Activity for the category. If an Applicant is not a CDFI Applicant, such estimated Award amount will be equal to 6 percent of the increase in Qualified Activity for the category. Notwithstanding the foregoing, for a CDFI Applicant and for an Applicant that is not a CDFI Applicant, the Award percentage applicable to an Equity Investment, Equity-Like Loan, or Grant in a CDFI shall be 15 percent of the increase in Qualified Activity for the category. For the Distressed Community Financing Activities and Service Activities categories, for a CDFI Applicant, such estimated Award amount will be equal to 9 percent of the weighted value of the increase in Qualified Activity for the category. If an Applicant is not a CDFI Applicant, such estimated Award amount will be equal to 3 percent of the weighted value of the increase in Qualified Activity for the category.

If the amount of funds available during the funding round is insufficient for all estimated Award amounts, Awardees will be selected based on the process described in the Interim Rule at 12 CFR § 1806.203(b). This process gives funding priority to Applicants that undertake activities in the following order: (i) CDFI Related Activities, (ii) Distressed Community Financing Activities, and (iii) Service Activities, as described in the Interim Rule at 12 CFR § 1806.203(c).

Within each category, CDFI Applicants will be ranked first according to the ratio of the actual Award amount calculated by the CDFI Fund for the category to the total assets of the Applicant, followed by Applicants that are not CDFI Applicants according to the ratio of the actual Award amount calculated by the CDFI Fund for the category to the total assets of the Applicant.

The CDFI Fund, in its sole discretion: (i) May adjust the estimated Award amount that an Applicant may receive, (ii) may establish a maximum amount that may be awarded to an Applicant, and (iii) reserves the right to limit the amount of an Award to any Applicant if the CDFI Fund deems it appropriate.

For purposes of calculating Award disbursement amounts, the CDFI Fund will treat Qualified Activities with a total principal amount less than or equal to $250,000 as fully disbursed. For all other Qualified Activities, Awardees will have 12 months from the end of the Assessment Period to make disbursements and 18 months from the end of the Assessment Period to submit to the CDFI Fund disbursement requests for the corresponding portion of their Awards, after which the CDFI Fund will rescind and deobligate any outstanding Award balance and said outstanding Award balance will no longer be available to the Awardee.

The CDFI Fund reserves the right to contact the Applicant to confirm or clarify information. If contacted, the Applicant must respond within the CDFI Fund's time parameters or run the risk of being rejected.

The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures. If those changes materially affect the CDFI Fund's Award decisions, the CDFI Fund will provide

information regarding the changes through the CDFI Fund's Web site.

There is no right to appeal the CDFI Fund's Award decisions. The CDFI Fund's Award decisions are final. The CDFI Fund does not provide debriefings and will not discuss the specifics of an Applicant's BEA Program Application or provide reasons why an Applicant did not receive a BEA Program Award. The CDFI Fund will only respond to general questions regarding the FY 2013 Application and Award decision process until 30 days after the award announcement date.

**VIII. Award Administration Information**

A. *Notice of Award:* The CDFI Fund will signify its selection of an Applicant as an Awardee by delivering a Notice of Award and Award Agreement to the Applicant. The Notice of Award and Award Agreement will contain the general terms and conditions underlying the CDFI Fund's provision of an Award. The Applicant must execute the Notice of Award and Award Agreement and return it to the CDFI Fund. Each Awardee must also ensure that complete and accurate banking information is reflected in its System for Award Management (SAM) account on *www.sam.gov.*

The CDFI Fund reserves the right, in its sole discretion, to rescind the Award, the Notice of Award, and the Award Agreement if the Awardee fails to return the Notice of Award and Award Agreement signed by the Authorized Representative of the Awardee or any other requested documentation by the deadline set by the CDFI Fund.

By executing a Notice of Award and Award Agreement, the Awardee agrees that, if information (including administrative errors) comes to the attention of the CDFI Fund prior to the Effective Date of the Award Agreement that either adversely affects the Awardee's eligibility for an Award, or adversely affects the CDFI Fund's evaluation of the Awardee's Application, or indicates fraud or mismanagement on the part of the Awardee, the CDFI Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award and Award Agreement or take other actions as it deems appropriate.

1. *Failure to meet reporting requirements:* If an Applicant, or its Affiliate, is a prior CDFI Fund awardee or allocatee under any CDFI Fund program and is not current on the reporting requirements set forth in the previously executed assistance, award, or allocation agreement(s), as of the date of the Notice of Award, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, until said prior awardee or allocatee is current on the reporting requirements in the previously executed assistance, award, or allocation agreement(s). Please note that automated systems employed by the CDFI Fund for receipt of reports submitted electronically typically acknowledge only a report's receipt; such acknowledgment does not warrant that the report received was complete and therefore met reporting requirements. If said prior awardee or allocatee is unable to meet this requirement within the timeframe set by the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the Award made under this NOFA.

2. *Pending resolution of noncompliance:* If an Applicant is a prior CDFI Fund awardee or allocatee under any CDFI Fund program and if: (i) It has submitted complete and timely reports to the CDFI Fund that demonstrate noncompliance with a previous assistance, award, or allocation agreement, and (ii) the CDFI Fund has yet to make a final determination regarding whether or not the entity is in default of its previous assistance, award, or allocation agreement, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds, pending full resolution, in the sole determination of the CDFI Fund, of the noncompliance. If said prior awardee or allocatee is unable to meet this requirement, in the sole determination of the CDFI Fund, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the Award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Award Agreement under this NOFA, the CDFI Fund has made a final determination that an Applicant that is a prior CDFI Fund awardee or allocatee under any CDFI Fund program is in default of a previously executed assistance, award, or allocation agreement(s) and has provided written notification of such determination to the Applicant, the CDFI Fund reserves the right, in its sole discretion, to delay entering into an Award Agreement and/or to delay making a disbursement of Award proceeds until said prior awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said Agreement within a timeframe set by the CDFI Fund. If said prior awardee or allocatee is unable to meet this requirement, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the Award made under this NOFA.

4. *Termination in default:* If prior to entering into an Award Agreement under this NOFA, (i) the CDFI Fund has made a final determination that an Applicant that is a prior CDFI Fund awardee or allocatee under any CDFI Fund program whose award or allocation terminated in default of such prior agreement; (ii) the CDFI Fund has provided written notification of such determination to such organization; and (iii) the anticipated date for entering into the Award Agreement under this NOFA is within a period of time specified in such notification throughout which any new award, allocation, or assistance is prohibited, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Award Agreement and the award made under this NOFA.

B. *Award Agreement:* After the CDFI Fund selects an Awardee, unless an exception detailed in this NOFA applies, the CDFI Fund and the Awardee will enter into an Award Agreement. The Award Agreement will set forth certain required terms and conditions of the Award, which will include, but not be limited to: (i) The amount of the Award, (ii) the type of the Award, (iii) the approved uses of the Award, (iv) performance goals and measures, and (v) reporting requirements for all Awardees. Award Agreements under this NOFA generally will have one-year performance periods. The Award Agreement shall provide that an Awardee shall: (i) Carry out its Qualified Activities in accordance with applicable law, the approved Application, and all other applicable requirements; (ii) not receive any monies until the CDFI Fund has determined that the Awardee has fulfilled all applicable requirements; and (iii) use an amount equivalent to the BEA Award amount for BEA Qualified Activities.

C. *Administrative and National Policy Requirements:* Not applicable.

D. *Reporting and Accounting:*

1. Awardees Without Persistent Poverty County Commitments: The CDFI Fund will require each Awardee without persistent poverty commitments that receives an Award over $50,000 through this NOFA to account for the use of the Award. This will require Awardees to establish administrative and accounting controls, subject to applicable OMB Circulars.

The CDFI Fund will collect information from each such Awardee on its use of the Award at least once following the Award and more often if deemed appropriate by the CDFI Fund in its sole discretion. The CDFI Fund will provide guidance to Awardees outlining the format and content of the information to be provided, outlining and describing how the funds were used.

2. Awardees With Persistent Poverty County Commitments: The CDFI Fund will require each Awardee with persistent poverty county commitments, regardless of Award size, to report data for Award funds deployed in persistent poverty counties and maintain proper supporting documentation and records which are subject to review by the CDFI Fund's Certification, Compliance Monitoring, and Evaluation unit.

**IX. Agency Contacts**

The CDFI Fund will respond to questions and provide support concerning this NOFA and the funding Application between the hours of 9:00 a.m. and 5:00 p.m. ET, starting on the date of the publication of this NOFA through July 10, 2013 for the FY 2013 funding round. The CDFI Fund will not respond to Applicants' reporting, compliance, or disbursement telephone calls or email inquiries that are received after 5:00 p.m. ET on July 10, 2013 until after the Application deadline. The CDFI Fund will respond to technical issues related to myCDFIFund accounts through 5:00 p.m. ET on July 12, 2013.

Applications and other information regarding the CDFI Fund and its programs may be downloaded and printed from the CDFI Fund's Web site at *www.cdfifund.gov.* The CDFI Fund will post responses to questions of general applicability regarding the BEA Program on its Web site.

A. *Information Technology Support:* Technical support can be obtained by calling (202) 653–0300 or by email to *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from creating a Distressed Community map using the CDFI Fund's Web site should call (202) 653–0300 for assistance. These are not toll free numbers.

B. *Application Support:* If you have any questions about the programmatic or administrative requirements of this NOFA, contact the CDFI Fund's BEA Program office by email at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 653–0421, by facsimile at (202) 508–0089, or by mail at CDFI Fund, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The number provided is not toll free.

C. *Certification, Compliance Monitoring and Evaluation (CCME) Support:* If you have any questions regarding the compliance requirements of this NOFA, including questions regarding performance on prior Awards, contact the CDFI Fund's CCME Unit by email at *ccme@cdfi.treas.gov* or by telephone at (202) 653–0423. The number provided is not toll free.

D. *Communication with the CDFI Fund:* The CDFI Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Awardees must use myCDFIFund to submit required reports. The CDFI Fund will notify Awardees by email using the addresses maintained in each Awardee's myCDFIFund account. Therefore, an Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, email addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

**Authority:** 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: May 31, 2013.

**Donna J. Gambrell,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. 2013–13417 Filed 6–5–13; 8:45 am]

**BILLING CODE 4810–70–P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

### Notice of Finding That Liberty Reserve S.A. Is a Financial Institution of Primary Money Laundering Concern

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice of finding.

**SUMMARY:** This document provides notice that, pursuant to the authority contained in 31 U.S.C. 5318A, the Director of FinCEN found on May 28, 2013, that Liberty Reserve S.A. (Liberty Reserve) is a financial institution operating outside the United States that is of primary money laundering concern.

**DATES:** The finding referred to in this notice was effective as of May 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** FinCEN, (800) 949–2732.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Provisions**

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107–56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the Secretary) to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A, grants the Secretary the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transaction, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and financial agencies to take certain ''special measures'' to address the primary money laundering concern. The Secretary has delegated this authority under Section 311 to the Director of FinCEN.

On May 28, 2013, the Director of FinCEN found that Liberty Reserve S.A. (Liberty Reserve) is a financial institution operating outside the United States that is of primary money laundering concern. The Director considered the factors discussed below in making this determination.

**II. The Extent to Which Liberty Reserve Has Been Used To Facilitate or Promote Money Laundering in or Through Costa Rica and Internationally**

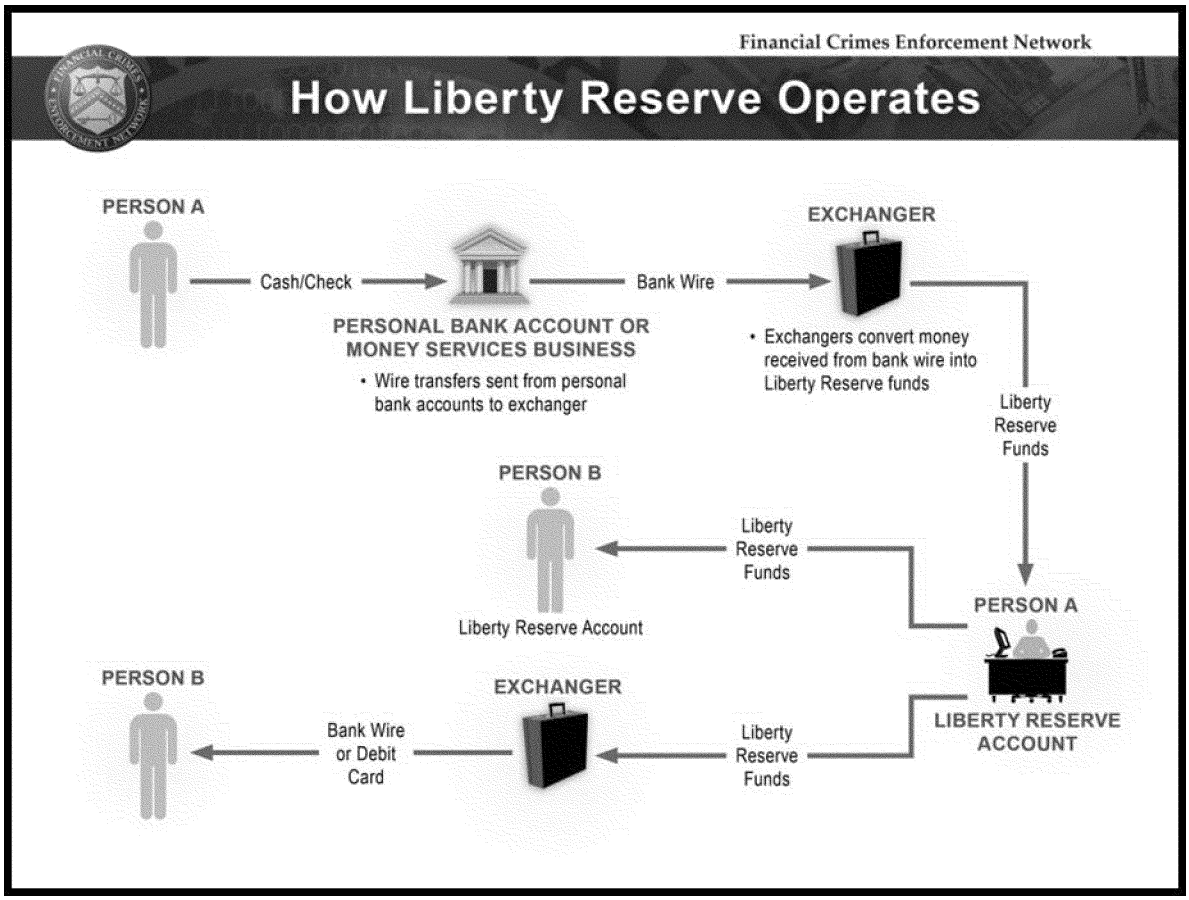
Liberty Reserve is a Web-based money transfer system, or ''virtual currency.'' It is a financial institution currently registered in Costa Rica and has been operating since 2001. Liberty Reserve's system is structured so as to facilitate money laundering and other criminal activity, while making any legitimate use economically unreasonable. The Department of Justice is taking criminal action against Liberty Reserve and related individuals.

Liberty Reserve uses a system of internal accounts and a network of virtual currency exchangers to move funds. Operating under the domain name *www.libertyreserve.com,* it

maintains accounts for registered users. Users fund their accounts by ordering a bank wire or money services business (MSB) transfer to the bank of a Liberty Reserve exchanger. Users can also fund Liberty Reserve accounts by depositing cash, postal money orders, or checks directly into the exchanger's bank account. The exchanger then credits a corresponding value to the user's Liberty Reserve account, denominated in ''Liberty Reserve Dollars'' or ''Liberty Reserve Euros.'' Liberty Reserve claims to maintain Dollar for Dollar and Euro for Euro reserves to back their virtual currencies.

To withdraw funds, the user instructs Liberty Reserve to send funds from the user's Liberty Reserve account to a Liberty Reserve exchanger, which then sends a bank wire, MSB transfer, or other transfer method to the user's or recipient's bank account in U.S. dollars or other major currencies. The exchangers are independent MSBs operating around the world. They charge a commission on each transfer to and from the Liberty Reserve system.

Once funded, the Liberty Reserve virtual currency can be transferred among accounts within the Liberty Reserve system. The transfers are anonymous, and the recipient only sees the account number from which the funds were transferred. For an additional fee, even that information can be eliminated for greater anonymity.




*A. History and Ownership*

According to reporting of a Planetgold.com interview in 2003 with Arthur Budovsky, who founded the company, Liberty Reserve was then based in Nevis and began as a private exchange system for import/export businesses. In 2002, Budovsky and another individual, Vladimir Kats, set up several other companies, including GoldAge Inc., according to the New York County District Attorney's Office. GoldAge served as a prominent exchanger for E-Gold, a gold-based virtual currency system. E-Gold was charged with money laundering and operating an illegal MSB, and pled guilty in 2008. Similar to how Liberty Reserve operates, customers opened online GoldAge accounts with only limited identification documentation and then could choose their method of payment, including wire transfers, cash deposits, postal money orders, or checks, to GoldAge to buy digital gold-based currency. GoldAge customers could withdraw their funds by wire transfers to anywhere in the world or by having checks sent to an individual.

In March 2004, Liberty Reserve's Web site indicated that it was operating out of Brooklyn, New York. In May 2006, Liberty Reserve was re-registered in Costa Rica. In July 2006, Budovsky and Kats were indicted by the state of New York for operating an illegal money transmitting business, GoldAge, out of their Brooklyn apartments. By that date, the defendants had transmitted at least $30 million through GoldAge to digital currency accounts globally since 2002. Budovsky pled guilty and was sentenced to five years of probation.

*B. Liberty Reserve Seeks Out Jurisdictions With Weak Regulatory Environments*

According to the 2012 International Narcotics Control Strategy Report (INCSR) prepared by the U.S. Department of State, money laundering in Costa Rica occurs across the formal and non-formal financial sectors, especially via both licensed and

unlicensed money remitters. According to the 2013 INCSR, although Costa Rica continues to take steps to enforce its financial and non-financial regulatory regimes to prevent and detect money laundering, money remittance services remain a sector of particular concern. The INCSR notes that ''Costa Rica is primarily used by foreign organizations as a bridge to send funds to and from other jurisdictions using bulk cash shipments and companies or financial institutions located offshore.''

The 2007 INCSR noted that ''[r]eforms in 2002 to the Costa Rican counternarcotics law expand the scope of anti-money laundering regulations, but also create an invitation to launder funds by eliminating the government's licensing and supervision of casinos, jewelers, realtors, attorneys, and other nonbank financial institutions.'' While some progress has made been since that time, regulation of this sector remains a concern. Thus, when Liberty Reserve moved its registration to Costa Rica in 2006, Costa Rica was commonly known to have inadequate regulation of non-bank financial institutions, including MSBs and internet businesses.

In October 2007, Liberty Reserve's official blog explained that registering in Costa Rica allowed the company to avoid U.S. authorities because Costa Rica does not have a mutual legal assistance treaty with the United States. Taken together, these facts suggest that Liberty Reserve has specifically sought out jurisdictions with weak anti-money laundering controls and apparent immunity from U.S. prosecution.

*C. Liberty Reserve Is Designed To Facilitate Money Laundering and Illicit Finance*

To open an account through the Liberty Reserve Web site, a user is asked to enter basic identifying information, such as name, email address, and date of birth. Liberty Reserve does not require users to validate any of that information. Users are also able to open as many accounts as they want. Liberty Reserve requires only a working, even if anonymous, email address. Once a user has an account with Liberty Reserve, its anti-money laundering policy (AML policy) does not suggest that it either requires or verifies any information associated with any transaction.

This lack of customer due diligence means that the accounts can be entirely anonymous and thus that account holders can transfer funds to or from anywhere with anyone with anonymity. Indeed, Liberty Reserve advertises this fact as a virtue of the service. The deliberate lack of verification makes Liberty Reserve a particularly attractive money transfer system for criminal clientele seeking to launder their criminal proceeds, to move funds to or from sanctioned jurisdictions and entities, or to finance terrorism internationally. Forcing users to deposit or withdraw funds through exchangers creates another layer of anonymity in the system. To offer even more anonymity, Liberty Reserve provides an option, for an additional fee, to conceal the sole identifier of origin, the originator's account number, in transactions.

Liberty Reserve's AML policy, issued in 2010, states that it is illegal for Liberty Reserve, ''its employees, agents or exchangers to knowingly engage, or attempt to engage in a monetary transaction in criminally derived property.'' It also states that it is illegal to ''transport, transmit or transfer, or attempt to transport, transmit or transfer a monetary instrument or funds in excess of $10,000 . . . either into or out of Costa Rica and/or any other countries with similar legislation if the purpose is to carry out an illegal activity, or to avoid reporting requirements.'' Its citation to these requirements demonstrates that Liberty Reserve is well aware of anti-money laundering laws. However, even having acknowledged that these activities are illegal in many jurisdictions in which they operate, and that they are aware of applicable laws and regulations in multiple jurisdictions, Liberty Reserve has structured its business to separate itself from knowledge that would allow it to detect money laundering. Indeed, the fact that Liberty Reserve has only a statement in its policy, with no implementation to address anti-money laundering concerns or requirements, is so deficient that it would not comply with any implementation of internationally accepted anti-money laundering requirements, such as the standards recommended by the Financial Action Task Force.

Liberty Reserve's AML policy provides less than one page regarding what Liberty Reserve considers a sufficient response to its risk for money laundering activity and its legal requirements. The only component of the policy that addresses any due diligence requirement indicates that the obligation is transferred entirely to the exchangers. The AML policy states that Liberty Reserve will verify the identity of the exchangers and request from them ''a compromise to verify the identity of their direct clients.'' Whatever this is intended to mean, there is no evidence that Liberty Reserve requires the accredited exchangers to engage in any such customer verification. To the contrary, exchangers with which Liberty Reserve continues to work appear to have no or minimal verification or monitoring of clients; for example, some have no anti-money laundering policy, and others affirmatively advertise that they conduct no verification. Many of them are located in countries with lax money laundering enforcement. As of 2009, Liberty Reserve had outsourced its own verification process for new exchangers to a non-affiliated company for which at least two U.S. banks have rejected wires due to money laundering concerns.

Relying on exchangers to conduct what little due diligence Liberty Reserve purports to require enhances the gravity of Liberty Reserve's money laundering risk. A review of publicly available information on Liberty Reserve's exchangers indicates that many of them do not provide names of contact persons and obscure the country of their business registration or physical location. To further conceal their ownership, several of the exchangers registered their domain names through third-party hosting services, and some of them used a paid service through their registrars to hide registration information from the public. Web site visitor traffic data on the exchangers' Web sites showed that most exchangers appear to serve relatively few customers and produce little online attention.

Liberty Reserve's AML policy states that it will verify the identity of any direct client of Liberty Reserve ''according to the guidelines of various jurisdictions.'' However, Liberty Reserve appears to have no verification requirements in practice except for a working email address. Similarly, its AML policy mentions requirements to ''train staff continuously on anti-money laundering regulations'' and to appoint a compliance officer responsible for monitoring and reporting ''any and all suspicious activities.'' Based on the information, or lack of information, collected by Liberty Reserve, it would be impossible for Liberty Reserve to operate an AML compliance program that complied with commonly required customer due diligence and suspicious activity reporting requirements.

Liberty Reserve's AML policy indicates an understanding of the key role suspicious activity reporting and responses play in anti-money laundering program requirements. The policy states ''LIBERTY RESERVE is legally bound to report such misdemeanors to the relevant authorities and as such you may be the [sic] subject to a criminal investigation.'' Liberty Reserve has structured itself, however, to ensure that it never has the

relevant information needed to comply with any stated obligation.

For all of these reasons, Liberty Reserve appears designed to facilitate money laundering and illicit finance. Funding a Liberty Reserve account, either through transfers from the owner of the account or from others, serves to place funds in the nominally legitimate stream of commerce. The anonymous nature of Liberty Reserve means such placement can be performed by anyone from anywhere using funds of any origin. Transfers within Liberty Reserve's system, which can be made between any accounts without record or identification, serve to structure and layer movement of funds such that, even if the initial placement can be traced, subsequent movement cannot. The ease and anonymity of account opening means that such movement could easily occur among accounts owned by a single person or entity, completely obscuring the origin of funds that leave the system, creating a one-stop money laundering system.

*D. Liberty Reserve Is Regularly Used To Store, Transfer, and Launder Illicit Proceeds*

Liberty Reserve is used extensively by criminals to store, transfer, and launder illicit proceeds, including through U.S. financial institutions. Information available to the U.S. government shows frequent wire transfer activity to or from Liberty Reserve that indicates money laundering, in that: (1) The legitimate business purpose, source of funds, and validity of the wire transactions could not be determined or verified; (2) little or no identifying information appeared in wire transaction records regarding the ultimate originators or beneficiaries such as addresses, telephone numbers, or identification numbers, with only Liberty Reserve in the ''reference'' field, suggesting an attempt to conceal the identities of the involved parties; (3) transactions involved unidentified entities located and/or banking in jurisdictions considered vulnerable or high-risk for money laundering activities; and (4) transactions involved large, round-dollar, repetitive international wire transfers sent to the same Liberty Reserve exchanger.

Information available to the U.S. government suggests frequent use of Liberty Reserve by criminals to receive, send, or launder funds. For example:

- A U.S. resident, on instructions from an individual allegedly involved in online fraud, sent over $150,000 in possible stolen funds to the individual through a Liberty Reserve account set up in the resident's name.
- Several persons reportedly utilized a scheme involving identity theft to create multiple fraudulent corporate accounts with an online broker/dealer and funded the accounts with over $250,000 in allegedly stolen funds. They then ordered over $100,000 in an unspecified number of international wire transfers to be credited to a specified Liberty Reserve account number.
- A contact for an international company sent over $1.3 million in dozens of large, round-dollar, repetitive international wire transfers to a Liberty Reserve account in mid- to late-2012. The individual was possibly using a personal bank account to conduct these business transactions, an indicator of potential money laundering.
- According to a news article in The Times of India, two individuals in Rajasthan, India were arrested in March 2013, for abducting and killing an individual they targeted through an online social networking site. The kidnappers demanded that ransom money be paid to their Liberty Reserve account. A cyber security expert cited in the news article stated that the kidnappers chose to use Liberty Reserve to execute their crimes because the system requires no proof of identification for the depositor or the recipient of funds, and Liberty Reserve will not disclose the internet protocol address of the recipient, which would aid law enforcement efforts.
- A facilitator of a foreign extremist group in 2013 held a Liberty Reserve account, which may have been used to collect funds for the group.
- One cybercriminal forum, the contents of which were recently made public, has long served as a point of sale for cybercriminal wares, including exploit kits, spam services, ransom-ware programs, botnets, and key-logging services, payable via Liberty Reserve.
- One hacker, who only accepts Liberty Reserve as payment, offered to sell the source code to ''Winlocker,'' an application to secure a computer with a password.
- One hacker claimed to have access to and control over several top dot-gov, dot-mil and dot-edu Web sites. The hacker also purported to sell personally identifiable information from hacked sites, for $20 per 1,000 records. These services were payable only via Liberty Reserve.
- As of February 2011, the source code for the latest version of the ZeuS banking Trojan, the preeminent cybersecurity threat used to steal bank account information, was available on an online criminal forum for a reported $100,000, payable only through Liberty Reserve.

*E. Liberty Reserve Is Not Designed For Legitimate Use*

Transfers made through Liberty Reserve currency cost considerably more than transactions made through comparable services, providing a significant disincentive for legitimate users. For example, a $10,000 transfer using Liberty Reserve would cost approximately $248 to $1,946 in fees. Transferring $10,000 through a comparable direct bank wire or MSB transfer costs approximately $40 to $200. The below chart illustrates some costs involved with a Liberty Reserve transfer, where, for example, Person A has $10,000 to move from a U.S. bank to Person B's bank account in another country through Liberty Reserve:

| Process step | Cost | Charges |
|---|---|---|
| 1. Person A wires money from a bank account to an exchanger ..... | Varies. $45 is an approximate average. | $45. |
| 2. Exchanger charges fee to convert USD into Liberty Reserve funds and places funds in Person A's Liberty Reserve account. | Ranges from 1%–10%, with possible flat fees associated with transaction. | At 1%: $99 charge.<br>At 5%: $497 charge.<br>At 10%: $995 charge. |
| 3. Person A instructs Liberty Reserve to move funds from his account to Person B's Liberty Reserve account. | 1% of transfer to receive money, up to a maximum of $2.99. | $2.99. Users can also pay an optional privacy fee to remove their account number from internal transfers. |
| 4. Person B sends Liberty Reserve funds to exchanger to convert to USD and send to Person B's bank account. | Ranges from 1%–10%, with possible flat fees associated with transaction. | At 1%: $98 charge.<br>At 5%: $472 charge.<br>At 10%: $896 charge. |

| Process step | Cost | Charges |
|---|---|---|
| 5. Person B receives funds in his bank account | | Total cost at 1%: $248.<br>Total cost at 5%: $1020.<br>Total cost at 10%: $1946. |

Liberty Reserve also is a completely irrevocable payment system and digital currency. The fact that the transactions are irrevocable, meaning that they cannot be reversed or refunded in the event of fraud, makes it a highly desirable system for criminal use and a highly problematic one for any legitimate payment functions. Revocability protects merchants and users from fraud and is a common feature of legitimate payment systems. Despite the security precautions that make it secure for illicit use, funds reportedly have been stolen from user accounts, making it even less attractive to any potential licit users. The company has been unresponsive to these customer complaints.

### III. The Extent to Which Liberty Reserve Is Used for Legitimate Business Purposes in Costa Rica

FinCEN has found no evidence that Liberty Reserve is used in Costa Rica for any business purpose, legitimate or otherwise. Costa Rican customers have no direct access to Liberty Reserve's offices. The only access to the business, anywhere in the world, is through its Web site. As noted above, Liberty Reserve appears to have chosen to locate itself in Costa Rica because Costa Rica is commonly known to have inadequate regulation of MSBs and internet businesses, and because the location allowed the company to avoid U.S. authorities because Costa Rica does not have a mutual legal assistance treaty with the United States.

### IV. The Extent to Which This Action Is Sufficient To Guard Against International Money Laundering and Other Financial Crimes

FinCEN's finding that Liberty Reserve is an institution of primary money laundering concern will guard against the international money laundering and other financial crimes described above directly by restricting the ability of Liberty Reserve to access the U.S. financial system to process transactions, and indirectly by public notification to the international financial community of the risks posed by dealing with Liberty Reserve.

Dated: May 28, 2013.

**Jennifer Shasky Calvery,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 2013–12944 Filed 6–5–13; 8:45 am]

**BILLING CODE 4810–2P–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0036]**

## Proposed Information Collection (Statement of Disappearance) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a presumption of death of a missing Veteran.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 5, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0036'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Statement of Disappearance, VA Form 21–1775.

*OMB Control Number:* 2900–0036.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 21–1775 is used to gather information from a claimant to make a decision regarding the unexplained absence of a Veteran for over 7 years. The data collected will be used to determine the claimant's entitlement to death benefits.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 28 hours.

*Estimated Average Burden per Respondent:* 2 hours 45 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 10.

Dated: June 3, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Enterprise Records Service, Office of Information and Technology, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–13430 Filed 6–5–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0216]**

### Proposed Information Collection (Application for Accrued Amounts Due a Deceased Beneficiary) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's entitlement to accrued benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 5, 2013.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0216'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Application for Accrued Amounts Due a Deceased Beneficiary, VA Form 21–601.

*OMB Control Number:* 2900–0216.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The information collected on VA Form 21–601 is use to determine a claimant's entitlement to accrued benefits that was due to a deceased Veteran but not paid prior to the Veteran's death. Each survivor claiming a share of the accrued benefits must complete a separate VA Form 21–601; however if there is no living survivors who are entitled on the basis of relationship, accrued benefits may be payable as reimbursement to the person or persons who bore the expenses of the Veteran's last illness and burial expenses.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 2,300 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 4,600.

Dated: June 3, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Enterprise Records Service, Office of Information Security, Office of Information and Technology, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–13439 Filed 6–5–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0095]**

### Proposed Information Collection (Pension Claim Questionnaire for Farm Income) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine net income derived from farming.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 5, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0095'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Pension Claim Questionnaire for Farm Income, VA Form 21–4165.

*OMB Control Number:* 2900–0095.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 21–4165 is used to gather information necessary to determine a claimant's countable annual

income and available assets due to farm operations. Farm income is not necessarily received on a weekly or monthly basis, and farm operating expenses must be considered in determining a claimant's eligibility to income–based benefits.

*Affected Public:* Individuals or households, and Farms.

*Estimated Annual Burden:* 1,038 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 2,075.

Dated: June 3, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Enterprise Records Service, Office of Information Security, Office of Information and Technology, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–13438 Filed 6–5–13; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0065]**

## Proposed Information Collection (Request for Employment Information in Connection With Claim for Disability Benefits) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's eligibility for increased disability benefits.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 5, 2013.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0065'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Request for Employment Information in Connection with Claim for Disability Benefits, VA Form 21–4192.

*OMB Control Number:* 2900–0065.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 21–4192 is used to request employment information from a claimant's employer. The collected data is used to determine the claimant's eligibility for increased disability benefits based on unemployability.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 15,000 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 60,000.

Dated: June 3, 2013.

By direction of the Secretary.

**Crystal Rennie,**

*VA Clearance Officer, Enterprise Records Service, Office of Information Security, Office of Information and Technology, U.S. Department of Veterans Affairs.*

[FR Doc. 2013–13437 Filed 6–5–13; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

Vol. 78 Thursday,
No. 109 June 6, 2013

Part II

## Environmental Protection Agency

40 CFR Parts 50, 51, 70 et al.
Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 50, 51, 70 and 71**

**[EPA–HQ–OAR–2010–0885, FRL–9810–3]**

**RIN 2060–AR34**

## Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing a rule for implementing the 2008 ozone national ambient air quality standards (NAAQS) (the ''2008 ozone NAAQS'') that were promulgated on March 12, 2008. This proposed rule addresses a range of state implementation plan requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), new source review (NSR) requirements in nonattainment areas, emission inventories, and the timing of state implementation plan (SIP) submissions and of compliance with emission control measures in the SIP. Other issues also addressed in this proposed rule are the revocation of the 1997 ozone NAAQS and anti-backsliding requirements that would apply when the 1997 ozone NAAQS is revoked.

**DATES:** *Comments.* Comments must be received on or before August 5, 2013. *Public Hearings.* The EPA plans to hold one public hearing concerning the proposed rule in Washington, DC. The date, time and location will be announced separately. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearings. *Information Collection Request.* Under the Paperwork Reduction Act (PRA), comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before July 8, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0885, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Mail:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2010–0885, Environmental Protection Agency, 1301 Constitution Ave. NW., Washington, DC 20460. Mail Code: 2822T. Please include two copies if possible. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- *Hand Delivery:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2010–0885, Environmental Protection Agency in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, Air and Radiation Docket and Information Center.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0885. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any CD you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in *www.regulations.gov.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

**FOR FURTHER INFORMATION CONTACT:** For further general information on this rulemaking, contact Dr. Karl Pepple, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 54l-2683, or by email at *pepple.karl@epa.gov;* or Mr. Butch Stackhouse, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, phone number (919) 54l-5208, or by email at *stackhouse.butch@epa.gov.* For information on the public hearings, contact Ms. Pamela S. Long at (919) 541–0641 or by email at *long.pam@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

Entities potentially affected directly by this proposal include state, local and tribal governments. Entities potentially affected indirectly by this proposal include owners and operators of sources of emissions (volatile organic compounds (VOCs) and nitrogen oxides ($NO_X$)) that contribute to ground-level ozone formation.

*B. What should I consider as I prepare my comments for the EPA?*

*1. Submitting CBI.* Do not submit CBI information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then

identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*2. Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

### *C. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this notice will be posted at *http://www.epa.gov/air/ozonepollution/actions.html#impl.*

### *D. What information should I know about possible public hearings?*

The EPA intends to hold one public hearing on this proposal. Further details concerning the public hearing for this proposed rule will be published in a separate **Federal Register** notice. For updates and additional information on the public hearings, please check the EPA's Web site for this rulemaking at *http://www.epa.gov/air/ozonepollution/actions.html#impl.*

### *E. How is this notice organized?*

The information presented in this notice is organized as follows:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments for the EPA?
C. Where can I get a copy of this document and other related information?
D. What information should I know about possible public hearings?
E. How is this notice organized?
II. Background for Proposal
A. The 2008 Ozone NAAQS
B. The Challenge of Ozone Implementation
C. History of Implementation Rules for the 1997 Ozone NAAQS
D. Section 110 SIP Requirements
E. Part D Nonattainment Area SIP Requirements
III. What are the state implementation plan requirements for the 2008 ozone NAAQS?
A. What is the deadline for submitting nonattainment area SIP elements due under Clean Air Act (CAA or Act) section 182 for the 2008 ozone NAAQS?
B. What are the requirements for modeling and attainment demonstration SIPs?
C. What are the RFP requirements for the 2008 ozone NAAQS?
D. How do RACT and RACM requirements apply for 2008 ozone NAAQS nonattainment areas?
E. Does the 2008 ozone NAAQS result in any new inspection and maintenance (I/M) programs?
F. How does transportation conformity apply to the 2008 ozone NAAQS?
G. What requirements for general conformity apply to the 2008 ozone NAAQS?
H. What are the requirements for contingency measures in the event of failure to meet a milestone or to attain?
I. How do the NSR requirements apply for the 2008 ozone NAAQS?
J. What are the emission inventory and emission statement requirements?
K. What are the ambient monitoring requirements?
L. How can states qualify for a 1-year attainment deadline extension?
M. How will the EPA address transport of ozone and its precursors for rural nonattainment areas, multi-state nonattainment areas and international transport?
N. How will the section 182(f) $NO_X$ provisions be handled?
O. Emissions Reduction Benefits of Energy Efficiency/Renewable Energy Policies and Programs, Land Use Planning and Travel Efficiency
P. Efforts To Encourage a Multi-Pollutant Approach When Developing 2008 Ozone SIPs
Q. How does this proposed rule apply to tribes?
R. What are the requirements for the Ozone Transport Region (OTR)?
S. Are there any additional requirements related to enforcement and compliance?
T. What are the requirements for addressing emergency episodes?
U. How does the ''Clean Data Policy'' apply to the 2008 ozone NAAQS?
V. What assistance programs is the EPA considering for implementation of the 2008 ozone NAAQS?
W. What is the deadline for states to submit SIP revisions to address the CAA section 185 penalty fee provision for Severe and Extreme areas?
IV. What is the EPA proposing to address anti-backsliding issues related to transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS?
A. General Background
B. Background on Transition From the 1-Hour to the 1997 Ozone NAAQS
C. Background on Nonattainment NSR
D. Background on Section 185 Fees
E. Background on the Contingency Measures Requirement
F. What is the EPA proposing regarding anti-backsliding requirements for the 1-hour and 1997 ozone NAAQS?
G. Timing of 1997 Ozone NAAQS Revocation and Related Anti-Backsliding Requirements
H. What are the applicable requirements for anti-backsliding purposes during the transition to the 2008 ozone NAAQS?
I. Application of Transition Requirements to Nonattainment and Attainment Areas
J. Satisfaction of Anti-Backsliding Requirements for an Area
K. How will the EPA's determination of attainment (''Clean Data'') regulation apply for purposes of the anti-backsliding requirements?
L. What is the relationship between implementation of the 2008 ozone NAAQS and the CAA title V permits program?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Determination Under Section 307(d)
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## II. Background for Proposal

### *A. The 2008 Ozone NAAQS*

On March 12, 2008,[1] the EPA revised the primary NAAQS for ozone, designed to protect public health, to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour concentration, averaged over 3 years).[2] The secondary NAAQS for ozone, designed to protect public welfare, was simultaneously set at the same level (and with the same averaging time) as the primary NAAQS. Since the 2008 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as ''the 2008 ozone NAAQS'' or ''the 2008 ozone standard.''

On September 16, 2009, the EPA announced[3] that it would initiate a rulemaking to reconsider the 2008 ozone NAAQS for various reasons, including the fact the 0.075 ppm level fell outside of the range for the primary standard recommended by the Clean Air Scientific Advisory Committee. Pending the outcome of that reconsideration, the EPA suspended further work on designating areas, and on classifying and developing implementation guidance for areas that would be designated nonattainment for the 2008 NAAQS. In September 2011, the OMB returned for further consideration the EPA's draft rulemaking to reconsider the 2008 ozone NAAQS.[4] The current primary and secondary NAAQS for ozone thus remains at 0.075 ppm, as established in 2008. The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997 but is set at a more stringent level.

### *B. The Challenge of Ozone Implementation*

The EPA and the states, and some local and tribal air agencies, are now proceeding with activities to implement the 2008 ozone NAAQS. In rules finalized on April 30, 2012, and May 31, 2012, the EPA formally designated all areas of the country as attainment/unclassifiable, nonattainment or unclassifiable for the 2008 NAAQS.[5] On April 30, 2012, the EPA also finalized a rule that established the approach for classifying ozone nonattainment areas for the 2008 ozone NAAQS based on their air quality concentrations, as well as the deadline for areas in each classification to achieve the 2008 ozone NAAQS.[6] That rule, referred to as the ''Classifications Rule,'' also addressed the revocation of the 1997 ozone NAAQS for purposes related to transportation conformity, and reclassification for certain areas in California. Today's proposed rule, referred to as the ''SIP Requirements Rule,'' addresses a range of additional issues important for implementing the 2008 ozone NAAQS.

In this action, the EPA proposes a rule to address the steps states will take to implement the 2008 ozone NAAQS and the timing of those steps. In accordance with Executive Order (EO) 13563 titled, ''Improving Regulation and Regulatory Review,'' signed by President Barack Obama on January 18, 2011, which directs governmental agencies to offer and support flexible, common sense approaches, this proposed SIP Requirements Rule is intended to provide the health and environmental protections required under the CAA while maximizing flexibility and minimizing burden for states, who are the primary implementing agencies.

Achieving the health benefits required by the CAA will require the combined efforts of federal, state, local, and in some cases tribal governments, each accomplishing the tasks for which it is best suited. For the EPA, that means adopting national standards where it makes sense to do so, such as standards to reduce emissions from sectors that are of national concern, such as mobile sources and many types of industries. It also means providing as much assistance and flexibility as possible to the states as they work to develop and implement their attainment plans. In addition, we are mindful that the requirement to implement the 2008 ozone NAAQS comes at a time when many states are facing substantial resource challenges. The EPA is committed to working in partnership with states and other stakeholders to share the burden of implementing the 2008 ozone NAAQS by promulgating a number of national regulations that will provide significant reductions in ozone precursors.

In this preamble, we lay out proposed expectations and requirements for implementation of the 2008 ozone NAAQS. As we have considered the elements of implementation of the NAAQS required under the CAA, it has been our goal to propose approaches that provide flexibility and opportunities for efficiency, without jeopardizing expeditious attainment of the public health and welfare goals, and to identify the ways in which the EPA will provide assistance to the states. We invite comment on any and all aspects of this proposed rule, and encourage suggestions that will increase implementation efficiency, allow the most effective pollution control programs to be implemented and identify additional ways in which the EPA can assist the states to reach attainment within the legal framework of the CAA.

The CAA was amended in 1990 to add specific provisions that apply to ozone nonattainment areas. These include timelines for both planning and implementation, and numerous mandates for specific programs to reduce emissions. Since that time, the EPA, states and others have gained a great deal of scientific knowledge and increased understanding of issues related to ozone formation and control. Specifically, we know more about how $NO_X$ and VOC interact to form ozone and we have better models for evaluating control strategies. This better understanding allows for more strategic approaches in which public health can serve as the key factor in prioritizing control measures. We also have a better appreciation for the role of interstate transport of ozone, international transport of pollutants and background levels of ozone. In the past 20 years, technology has evolved substantially, particularly with respect to mobile sources, with the result that some of the very specific programs mandated for ozone nonattainment areas, such as Stage II Vapor Recovery and vehicle I/M programs, may not provide the benefits they did originally because the problems that they were designed to address have been largely solved in other ways or technology advances make them no longer relevant. New and creative emission reduction approaches, such as energy efficiency and land use programs, are now being explored that have great promise for improved air quality and other benefits, but may not fit easily into the timelines of the CAA or the EPA's traditional expectations for SIPs. Other innovative approaches, such as I/M programs built around next generation testing technologies like onboard diagnostics (OBD), are available now and the EPA will work with states interested in adopting such programs to ensure their effective implementation.

The EPA has explored a number of approaches to address the issues discussed above and has identified

[1] 73 FR 16436.

[2] For a detailed explanation of the calculation of the 3-year 8-hour average, *see* 40 CFR part 50, Appendix I.

[3] *http://yosemite.epa.gov/opa/admpress.nsf/0/85F90B7711ACB0C885257763300617D0D.*

[4] Memorandum from Cass R. Sunstein to the former EPA Administrator Lisa Jackson, September 2, 2011.

[5] The EPA designated 46 areas as nonattainment for the 2008 ozone NAAQS.

[6] 77 FR 30160, May 21, 2012.

several ways to achieve emission reductions through national/regional standards and provide states flexibility and assistance in meeting the CAA requirements to increase implementation efficiency while still ensuring the public health and welfare protection achieved by meeting the ozone NAAQS. In subsequent sections of this preamble, we lay out our proposed approaches, but here are a few examples:

1. *Federal control measures:* States can rely on emission reductions from federal control measures to help areas attain the 2008 ozone NAAQS or to meet other SIP-related objectives, as long as the federal measures achieve their reductions prior to the relevant SIP-related deadlines. Promulgated and planned federal rules include, but are not limited to: (1) Tier 3 emissions standards for on-road motor vehicles;[7] (2) Maximum Achievable Control Technology (MACT) rules that address hazardous air pollutants (HAPs) that are also VOCs, such as rules associated with oil and gas development, internal combustion engines, incinerators, boilers and cement kilns; and (3) consumer product rules. The emission reductions achieved by these federal rules will reduce the amount of emission reductions individual states will need to achieve through state and local regulations in order for areas to attain the 2008 ozone NAAQS.

2. *Stage II Vapor Recovery:* In a separate **Federal Register** notice (77 FR 28772; May 16, 2012), the EPA determined that onboard refueling vapor recovery was in widespread use throughout the country and, as a result, the EPA exercised its authority under the CAA to waive the mandatory section 182(b)(3) stage II vapor recovery requirement. This waiver allows states, if they determine it appropriate, to discontinue the requirement for gasoline dispensing facilities (GDFs) in Serious and above nonattainment areas to install and operate Stage II vapor recovery systems, and the requirement for states to inspect such systems, resulting in cost savings for both the states and the owners and operators of GDFs.

3. *Attainment demonstrations:* The EPA is investigating opportunities for easing the burden on states to conduct air quality modeling to demonstrate attainment, particularly for nonattainment areas initially classified as Moderate or reclassified to Moderate for the 2008 ozone NAAQS. The EPA is exploring options such as making available various emissions, meteorological and boundary conditions inputs, and national scale modeling results that were generated in support of EPA rules, that states could reference as part of their attainment demonstrations.

4. *Innovative and creative approaches:* EO 13563 specifically requires agencies to ''seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.'' The EPA is encouraging innovative and creative approaches to reducing emissions such as improvements in energy efficiency and land use programs, especially since many of the more traditional control measures have already been implemented in many areas. The EPA is committed to working in partnership with states to facilitate the incorporation of such approaches into SIPs. Energy efficiency, renewable energy programs, land use planning and travel efficiency are discussed in more detail in section III.O of this preamble.

5. *Updated information:* The EPA will continue to assist states' implementation efforts by offering a variety of new compilations of information that will be useful to all states. In 2012, the EPA issued an updated ''Menu of Control Measures'' document which includes information on $NO_X$ and VOC control measures, including efficiencies and costs, for a range of source categories. This menu of measures is located at *http://www.epa.gov/airquality/ozonepollution/SIPToolkit/*. In addition, the EPA developed a Web site with information on existing local ozone reduction measures (e.g., ozone action days, ridesharing programs) and a forum for the exchange of ideas about potential state and local measures. This control measure Web site is located at *http://www.epa.gov/airquality/ozonestrategy/*. General information about SIP implementation requirements is located at *http://www.epa.gov/air/ozonepollution/implement.html*. Specific information regarding SIP submittal and approval status is located at *http://www.epa.gov/airquality/urbanair/sipstatus/*.

6. *Emissions offset relief in Economic Development Zones:* The EPA will work with states to identify areas within nonattainment areas as zones to which economic development should be targeted. In these zones, the CAA allows new or modified major sources seeking permits to meet emissions growth offset requirements by drawing from a pool of growth allowances established by the state. This will help ensure clean air requirements can be met in a way that is consistent with economic development in low-employment areas and other areas in need of job growth.

7. *Rural transport areas:* Section 182(h) of the CAA provides a ''rural transport'' classification for ozone nonattainment areas that are rural in nature and can demonstrate that sources in the area do not make a significant contribution to ozone concentrations measured in the area or in other areas. These areas are subject to Marginal area requirements, regardless of the area's classification under section 181(a), in recognition of that fact.

8. *RFP requirements:* The EPA is proposing to provide nonattainment areas classified as Moderate and above the flexibility in certain situations to substitute $NO_X$ reductions for VOC reductions in their 15 percent RFP plans. We believe that, given the improved scientific understanding of the formation of ozone, it makes sense, wherever possible, to allow states to credit toward the RFP requirement those reductions that an area most needs to reach attainment.

9. *Combining submittals:* The EPA is proposing, as an option, to allow states to combine SIP submittals where they believe it will reduce administrative burdens, and to adjust timeframes to provide more time for states to conduct some of the necessary rulemaking or program development activities without compromising expeditious progress towards and attainment of the standards.

10. *Encouraging early reductions:* Under the ''Ozone Advance'' program, the EPA is working with states, tribes and local governments to ensure they are aware of the advantages of early action and to provide assistance in taking steps to achieve emission reductions in ozone attainment areas and participating Marginal nonattainment areas. Early reductions may help these areas maintain the 2008 ozone NAAQS. The EPA believes there are significant advantages for states, tribes and local governments to take steps to reduce emissions as early as possible. Early reductions can help to maintain or improve existing air quality, which in turn can help to ensure continued health protection and keep an area in attainment or, if eventually designated as nonattainment under a future ozone NAAQS, help bring the area back into attainment. In addition, efforts to improve local air quality can establish working relationships between

[7] In addition to the planned Tier 3 emission standards, other new and existing mobile source regulations addressing emissions from new heavy-duty vehicles, non-road equipment and engines, locomotives, marine engines and ocean-going vessels will continue to provide additional emissions reductions as the current fleets are replaced with vehicles, equipment and engines that are certified to more stringent emissions standards or engines are re-built to comply with any applicable requirements.

key stakeholders that can help achieve emission reductions quickly and in ways that make the most sense to the particular community.

The EPA will work closely with states and tribes to provide assistance and flexibility in implementing the 2008 ozone NAAQS consistent with the implementation approaches that are adopted in the final implementation rule. The EPA solicits comment on other suggestions commenters may have for this implementation rule that are consistent with the CAA and provide flexibility to the states for common sense implementation that will provide for timely progress towards attainment of the 2008 ozone standard.

*C. History of Implementation Rules for the 1997 Ozone NAAQS*

In 2004 and 2005, the EPA promulgated regulations codified in 40 CFR part 51, subpart X, addressing implementation of the 1997 8-hour ozone NAAQS, revocation of the 1979 1-hour ozone NAAQS, and the anti-backsliding requirements that continued to apply for the revoked 1979 standard. *See* **Federal Register** publications at 69 FR 23951, April 30, 2004 (the ''Phase 1'' Rule) and 70 FR 71612, November 29, 2005 (the ''Phase 2'' Rule). The EPA received several petitions for reconsideration and several parties submitted petitions for judicial review of those rules. The EPA granted reconsideration of several issues and took final action on those issues. Challenges to those reconsideration actions were consolidated with the challenges to the Phase 1 and Phase 2 Rules. The court upheld portions of the Phase 1 Rule but vacated limited portions concerning the classification of areas under subpart 1 of part D of title I of the CAA and the failure to include three anti-backsliding requirements associated with the revoked 1-hour ozone NAAQS. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) (*South Coast*). Although the court upheld only limited challenges, it seemed to vacate the Phase 1 Rule in its entirety. The EPA requested rehearing and clarification of the ruling, and on June 8, 2007, the court clarified that it vacated the rule only to the extent that it had upheld petitioners' challenges. *South Coast Air Quality Management District, et al.,* v. *EPA,* 489 F.3d 1245 (D.C. Cir. 2007). Thus, only the following provisions of the Phase 1 Rule were vacated: The provisions that classified some 1997 8-hour ozone nonattainment areas under subpart 1, part D, title I of the CAA; and the provisions that did not retain three anti-backsliding obligations associated with the revoked 1-hour ozone NAAQS: nonattainment NSR, section 185 penalty fees and contingency measures for failure to attain or to make reasonable progress toward attainment.[8] The EPA finalized action to re-address the vacated subpart 1 classifications and contingency measures provisions of the Phase 1 Rule. 77 FR 28424, May 14, 2012. The EPA proposed action to re-address the vacated nonattainment NSR provision. 75 FR 51960 (August 24, 2010). We are re-addressing the anti-backsliding requirements for the section 185 fee program for the revoked 1-hour ozone NAAQS and re-proposing further action on the NSR anti-backsliding issues as part of this proposal.

In the litigation on the Phase 2 Rule, the EPA requested and the court granted a remand of the provision that allowed emission reductions from outside a nonattainment area to be credited toward the RFP requirement for that area, so that the EPA could reconsider that provision in light of the EPA's different treatment of such reductions under the fine particle ($PM_{2.5}$) implementation rule (72 FR 20586, April 25, 2007). The EPA then issued a revised rule requiring that states include in their baseline all emissions within any area outside of the nonattainment area from which reductions are being credited for rate of progress (ROP) purposes (74 FR 40074, August 11, 2009). On May 13, 2010, the EPA granted a petition for reconsideration of this provision in light of the $NO_X$ SIP Call/RACT court decision described below. We proposed a rule to address this reconsideration as it relates to the 1997 ozone NAAQS (75 FR 80420, December 22, 2010), and we discuss this issue in more detail as it relates to the 2008 ozone NAAQS in section III.C.4 of this preamble.

On July 10, 2009, the court issued its ruling on the remaining challenged provisions pertaining to the Phase 2 Rule. *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009). The court upheld the Phase 2 Rule in large part, finding most of the challenged provisions to be reasonable interpretations consistent with the statutory mandates in the CAA. The court, however, granted the petitions for review on limited issues. It remanded the EPA's determination that compliance with the $NO_X$ SIP Call regional cap-and-trade program would satisfy the area-specific RACT requirement. It also remanded the revisions made to the requirements for NSR offsets in certain areas and vacated the extension of an NSR waiver provision beyond the previous 18-month time limit. The effect of the vacatur of the 18-month time limit is discussed in section III.I of this preamble.

A listing of the relevant rulemakings concerning implementation of the 1997 ozone NAAQS appears in Appendix B of this preamble.

*D. Section 110 SIP Requirements*

CAA section 110(a) imposes an obligation upon states to make a SIP submission with respect to the 2008 8-hour ozone NAAQS. CAA section 110(a)(1) requires states to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of the new or revised NAAQS, or within such shorter period as the EPA may prescribe.[9] Section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. The EPA refers to this type of SIP submission as the ''infrastructure'' SIP. The requirements for infrastructure SIPs include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The contents of that submission may vary depending upon the facts and circumstances. In particular, the content of such a SIP submission may vary depending upon what provisions the state's existing SIP already contains. Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1). This includes SIP submissions incorporating necessary local nonattainment area requirements, which are due pursuant to the schedule in section 182.[10] The

[8] The court's June 8, 2007, clarification also confirmed that the December 22, 2006, decision did not establish a requirement that areas continue to demonstrate conformity for the 1-hour ozone NAAQS for anti-backsliding purposes.

[9] The EPA did not prescribe a shorter period for the 2008 8-hour ozone NAAQS; thus, the SIP submission was due March 12, 2011.

[10] Nonattainment area plans required by part D title I of the CAA for the 2008 8-hour ozone NAAQS are due by various dates as established throughout subpart 2 of part D, i.e., reasonably available control measures are due in 2 years under 182(b)(2), reasonable further progress plans and attainment plans for Moderate areas are due in 3 years under 182(b)(1), and attainment demonstrations for Serious and above areas are due in 4 years under 182(c)(2). The EPA has in the past interpreted these dates to run from the effective dates of the nonattainment designations, *see* 68 FR 32802, 32816–817 (June 2, 2003) (''subpart 2 SIP submittals will be due as a general matter by the same period of time after designation and classification under the 8-hour standard as provided in subpart 2 for areas designated and classified at the time of enactment of the 1990 CAA.'') The designations for the 2008 ozone standard were effective on July 20, 2012. *See* 77 FR 30088 (May 21, 2012) and 77 FR

two section 110 SIP elements not governed by the 3-year submission deadline are: (i) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a nonattainment area new source review permit program for major sources as required in part D of title I of the CAA; and (ii) submissions required by section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D of title I of the CAA. The EPA also notes that the D.C. Circuit's recent opinion in *EME Homer City Generation* v. *EPA,* 696 F.3d 7, 31 (D.C. Cir. 2012) concluded that a SIP cannot be deemed to lack a required submission or deemed deficient for failure to meet the 110(a)(2)(D)(i)(I) obligation until after the EPA quantifies that obligation.

In the case of the 2008 8-hour ozone NAAQS, the period during which the EPA was making efforts to reconsider the 2008 NAAQS with the expectation of revising it in the near term extended about 6 months beyond March 12, 2011, the normal deadline for submission of infrastructure SIPs. The EPA therefore did not prepare and issue timely guidance for the states to assist them in preparing their submissions. Also, states were given the impression that if the NAAQS were revised as a result of the reconsideration, the 3-year deadline would reset. However, despite the reconsideration process, March 12, 2011, remained the legally applicable deadline for infrastructure SIPs for the 2008 8-hour ozone NAAQS. The EPA recently responded to a court order requiring the EPA to make findings of failure to submit for certain infrastructure SIPs that had not been found complete by March 12, 2011.[11]

The EPA recognizes that many states are affected by transported ozone and ozone precursors from upwind states, and that transported pollution may contribute significantly to air pollution that exceeds the NAAQS in those states. The CAA establishes states' responsibilities to address interstate transport through two provisions: section 110(a)(2)(D) (specifying certain of the requirements for the ''infrastructure'' SIPs) and section 126 (requiring notification to downwind states of planned new or modified sources and providing a petition process through which downwind jurisdictions can seek to have specific sources of transported pollution addressed). This proposed implementation rule, which deals with the required SIP elements for areas designated as nonattainment for the 2008 ozone NAAQS, does not address states' obligations under the CAA to reduce transported pollution. Although, as noted elsewhere in this notice, the EPA intends to issue a guidance memorandum on the required elements of the section 110 infrastructure SIP submittal for the 2008 ozone NAAQS, that memorandum also would not contain guidance on how to meet the requirements of section 110(a)(2)(D)(i)(I), which deals with air pollutant emissions within a state that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in a downwind state.

*E. Part D Nonattainment Area SIP Requirements*

In addition to the obligation to submit required section 110 infrastructure SIPs within 3 years of promulgation of a new or revised NAAQS, states with designated nonattainment areas also have the obligation to submit SIPs designed to bring those areas into attainment. SIP requirements applicable to nonattainment areas are found in part D of title I of the CAA. Subpart 1 of part D discusses general requirements for nonattainment areas, including the requirement that states adopt and submit for the EPA's approval detailed SIPs that bring the area into attainment.

Subpart 2 of part D contains additional provisions specifically applicable to ozone nonattainment areas. Subpart 2 includes CAA sections 181 through 185B. Section 181 of subpart 2 creates a framework for classifying ozone nonattainment areas into five classification categories based on the severity of their ozone air quality problems.

Section 181(a) includes attainment deadlines for each classification category in relation to the time the area is designated nonattainment: Marginal areas are required to attain within 3 years of designation; Moderate areas—within 6 years; Serious areas—within 9 years; Severe-15 areas—within 15 years; Severe-17 areas—within 17 years; and Extreme areas—within 20 years.[12] Section 182 of subpart 2 outlines SIP requirements applicable to ozone nonattainment areas in each classification category. In general, under the framework established by subpart 2, areas classified in higher nonattainment categories are provided with more time to attain the ozone NAAQS but are also subject to more extensive planning and control obligations.

Where the Classifications Rule primarily dealt with issues related to CAA section 181, this rule addresses issues related to CAA sections 182 through 185B. Subpart 2 is the focus of much of the discussion of this rule. When a topic is discussed that is not covered by subpart 2, reference will be made to the more general subpart 1 requirements found in CAA sections 171 through 179B, or to other sections of the CAA, as appropriate. As discussed in section II.D of this proposal, section 110(a) infrastructure SIPs will be the topic of a separate guidance document.

## III. What are the state implementation plan requirements for the 2008 ozone NAAQS?

*A. What is the deadline for submitting nonattainment area SIP elements due under CAA section 182 for the 2008 ozone NAAQS?*

Section 182 of the CAA requires states with ozone nonattainment areas to submit various SIP elements within specified time periods after enactment of the CAA Amendments of 1990: (1) An emission inventory for the nonattainment area within 24 months (section 182(a)(1)); (2) a RACT SIP within 24 months (section 182(b)(2)); (3) a 15 percent RFP plan for Moderate and above areas within 3 years (section 182(b)(1)); (4) an attainment plan for Moderate areas within 3 years (section 182(b)(1)); (5) an attainment plan and demonstration for Serious and above areas within 4 years (section 182(c)(2)); and (6) a 3 percent per year RFP plan for Serious and above areas within 4 years (section 182(c)(2)).

In the Phase 2 Rule, we interpreted the SIP submittal time periods in section 182 to run from the effective date of designation and classification for the 1997 ozone NAAQS. *See* 70 FR 71670. However, with regard to attainment demonstrations for Serious and above areas, we provided 3 years, instead of 4 years, to submit an attainment demonstration. Specifically, we promulgated 40 CFR 51.908(a) which required all areas classified Moderate or higher to submit attainment demonstrations based on photochemical grid modeling no later than 3 years after the area's designation for the 1997 8-hour ozone NAAQS. We explained that at the time of the 1990 Amendments, Congress required Serious and above areas to base their attainment demonstrations on photochemical grid modeling, which at that time was a relatively new modeling

34221 (June 11, 2012). In this notice, the EPA is proposing two options for SIP submittal dates for the 2008 ozone NAAQS. *See* section III.A.

[11] *See* 78 FR 2882, January 15, 2013.

[12] Attainment deadlines for the 2008 ozone NAAQS were established in the Classifications Rule, 77 FR 30160, May 21, 2012.

technique. Congress then gave those areas 4 years to submit an attainment demonstration. In the Phase 2 rulemaking, we determined that photochemical grid modeling should be required for Moderate areas as well as for Serious and above areas, and we explained that the technique was no longer new and that areas did not need 4 years to submit an attainment demonstration based on such modeling. The policy reasons that existed at the time the Phase 2 rule was developed, specifically, the need for timing consistency between subpart 1 and subpart 2 areas within the same region, the timing of the large-scale transport modeling underway at the time, and the option of coordinated planning with the similarly timed $PM_{2.5}$ SIPs, are not circumstances faced today by the Serious and higher areas.

For purposes of the 2008 ozone NAAQS, the EPA proposes in the alternative the following two approaches regarding the deadlines for submitting the various elements of the state implementation plan.

*Period of time provided by the statute.* Section 182 of the CAA specifies a time period, running from the date of enactment of the 1990 CAA Amendments, for states to submit each required element of the state implementation plan for nonattainment areas. Under this first alternative, the EPA is proposing that the time period specified in section 182 for the submission of each required element (*i.e.,* 2 years for emission inventories and RACT SIPs, 3 years for 15 percent RFP plans and Moderate area attainment demonstrations and 4 years for 3 percent per year [13] RFP plans and attainment demonstrations from Serious and higher areas), as described above, would apply and that such time periods would run from the effective date of an area's designation for the 2008 ozone NAAQS. *State's choice: consolidated SIP submittal due 30 months after designation, or period of time provided by the statute.* The EPA's second alternative, which is our preferred alternative, is for the state to have the choice of meeting the statutory deadline for each required SIP element as set out in section 182, or following a consolidated submittal approach. Under the consolidated approach, all of the required SIP elements for a nonattainment area would be submitted at one time, no later than 30 months after the effective date of the area's designation for the 2008 ozone NAAQS. The consolidated approach represents a more expeditious schedule for areas to submit attainment demonstrations and RFP SIPs for the 2008 ozone NAAQS, but it provides slightly more time for submittal of emission inventories and RACT SIPs. We are proposing under this alternative that a state can choose, for a particular nonattainment area, to submit all SIP elements required under section 182 no later than 30 months after the effective date of designation; or the state can choose to submit all SIP elements in accordance with the time provided by the statute. As part of this alternative proposal, a state with more than one nonattainment area can select the option that is most preferable for each area. This alternative proposal applies only to areas designated Moderate and above for the 2008 ozone NAAQS.

The consolidated approach may be preferable for some states because it would allow them to undertake a more coordinated and less burdensome planning process, including only having one period for public review and opportunity for public hearing for all the SIP elements involved. (Note that all states that include part of a multi-state nonattainment area would need to consult with each other and adopt the same SIP submittal deadline(s) with respect to the entire multi-state area.) Moreover, we believe that the 30-month timeframe would be reasonable for many areas. Those states with areas currently classified as Moderate and above for the 2008 ozone NAAQS have significant experience preparing modeled attainment demonstrations and many are participating in ongoing modeling with nearby states to address regional ozone issues. Thus, for some areas it may be less burdensome to submit all ozone SIP elements concurrently within 30 months of designation. We note that an added benefit of earlier completion of the attainment planning process is that it provides states and sources with additional time to implement the measures adopted as part of the RFP plan and attainment demonstration.[14] This is particularly critical for Moderate areas, which have only 6 years to attain the standard. The EPA designated most areas on April 30, 2012, with an effective date 60 days after publication in the **Federal Register**. Thus, attainment demonstrations would be due under this option for most areas by January 2015, prior to the beginning of the 2015 ozone season. The EPA believes that the later due date for emission inventories and RACT SIPs under this option would provide for a *de minimis* delay. Implementation of the RACT requirements would still occur on the schedule established by CAA section 182(b)(2)(C). From an accountability standpoint, if the 30 months elapse with no SIP submittal from the state, the EPA will assume by default that the state has chosen to take the amount of time allowed by the statute for the attainment plan and demonstration, and is late with the RACT and emissions inventory SIP and thus potentially subject to a finding of failure to submit.

*B. What are the requirements for modeling and attainment demonstration SIPs?*

An attainment demonstration consists of: (1) Technical analyses, such as base year and future year modeling, to locate and identify sources of emissions that are contributing to violations of the 2008 ozone NAAQS within the nonattainment area (i.e., analyses related to the emissions inventory for the nonattainment area and the emission reductions necessary to attain the standard); (2) a list of adopted measures (including RACT controls) with schedules for implementation and other means and techniques necessary and appropriate for demonstrating RFP and attainment as expeditiously as practicable but no later than the outside attainment date for the area's classification; (3) a RACM analysis; and 4) contingency measures required under section 172(c)(9) of the CAA that can be implemented without further action by the state or the Administrator to cover emissions shortfalls in RFP plans and failures to attain. Penalty fee programs for failure to attain in Severe and Extreme areas are also associated with or are part of the attainment demonstration and are addressed in other sections of this proposal.

1. Marginal Areas

Under section 182(a), Marginal areas have up to 3 years from designation to attain the NAAQS, and are not required to submit an attainment demonstration. When Congress amended the CAA in 1990, it anticipated that nonattainment areas with ozone concentrations close to the level of the NAAQS would likely come into attainment within 3 years after designation as nonattainment without any additional local planning.

Although states are not required to develop attainment demonstrations for

[13] Typically submitted in 3-year increments, thus as 9 percent RFP plans that produce average reductions of 3 percent per year.

[14] Emission reductions resulting from implementation of RACT, RFP and other state and federal requirements may, in some cases, not be sufficient to demonstrate attainment. States are responsible for adopting any additional measures needed to attain the NAAQS. These additional measures would be submitted by the state as part of the attainment plan and demonstration.

Marginal areas, there may be modeling completed by the EPA or other state organizations which may provide useful information regarding whether Marginal areas may be expected to attain by their attainment dates. For example, as part of the Cross State Air Pollution Rule (CSAPR), the EPA modeled the expected improvements in air quality from existing federal, state and local controls. We encourage states to use available modeling information to examine the likelihood of whether a Marginal area would attain within 3 years.

Where such modeling indicates that a Marginal area is unlikely to attain the standard by its attainment date without the implementation of additional controls, we strongly encourage states or local agencies to work to get the necessary emission reduction measures in place in order to meet the ozone NAAQS within the 3-year timeframe. Marginal areas that do not attain the standard by the required date are required to be reclassified (or ''bumped up'') to the Moderate classification, which would require the application of mandatory planning and control requirements. If it is not possible to implement sufficient additional controls for a Marginal area to attain by the 3-year maximum attainment date, states may wish to consider voluntarily requesting reclassification to the Moderate classification. The EPA intends to offer assistance to the states as they consider the most appropriate course of action for Marginal areas that may be at risk of failing to meet the NAAQS within the applicable 3 year timeframe: whether to adopt additional controls or seek a voluntary reclassification to the next higher category. Early reclassification would provide more time for adopting and implementing the control measures needed for attainment by the Moderate area attainment date than the area would have if it is reclassified after it fails to attain within 3 years of designation. If an area is reclassified based on an EPA determination that the area failed to attain by its attainment date, the state would likely have only 18 to 24 months to adopt and implement controls by the beginning of the final full ozone season before the Moderate area deadline because the statute requires areas to attain by the latest acceptable attainment date for any classification regardless of when the area is reclassified.

2. Moderate Areas

Section 182(b)(1)(A) requires states with Moderate (and higher classified) ozone nonattainment areas to develop an attainment demonstration that provides for reductions in VOC and $NO_X$ emissions ''as necessary to attain the national primary ambient air quality standard for ozone.'' Although not specifically required by the statute, in the Phase 1 Rule for the 1997 ozone NAAQS, the EPA required states with Moderate and above areas to submit photochemical grid modeling or another equivalent analytical method to satisfy the attainment demonstration requirement for each area, which is the CAA requirement that applies for Serious and above areas (CAA section 182(c)(2)(A)). The EPA explained that it was reasonable to do so because this modeling was generally available and reasonable to employ. The EPA is proposing to continue to require states with an area classified as Moderate to submit an attainment demonstration based on photochemical modeling or another equivalent analytical method that is determined to be at least as effective, as is required under the Act for Serious and above areas and multi-state nonattainment areas.[15]

This requirement explicitly allows for alternative analytical methods to be substituted for or used to supplement a photochemical modeling-based assessment of an emissions control strategy. Any alternative analysis should be based on technically credible methods and provide for the timely submittal of the attainment demonstration and implementation of SIP controls. States should review the EPA modeling guidance and consult their appropriate EPA regional office before proceeding with alternative analyses.

3. Serious and Above Areas

For Serious and higher-classified areas, we continue to believe that photochemical modeling is the most technically credible method of estimating future year ozone concentrations based on projected VOC and $NO_X$ precursor emissions. States with areas classified as Serious and higher must submit an attainment demonstration based on photochemical modeling or an alternative analytical method determined by the Administrator to be at least as effective.

4. What guidance is there for using models to demonstrate attainment?

The procedures for modeling ozone as part of an attainment demonstration are well developed and described in the EPA's ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze.'' [16] This guidance document, as it currently exists, can be used by states developing attainment demonstration SIPs for the 2008 ozone NAAQS. The EPA is considering updates to the guidance to address ozone modeling for the 2008 ozone NAAQS. We will issue any updates as needed.

All photochemical modeling in support of an attainment demonstration should be consistent with the EPA's ozone modeling guidance. States with areas that were nonattainment for the 1997 ozone NAAQS or are nonattainment today have invested considerable resources in local and/or regional ozone modeling analyses. We encourage states to work together to leverage the work and resources from these existing analyses, as well as to develop new analyses for the 2008 ozone NAAQS as appropriate. The application of air quality models requires a substantial effort by state agencies and the EPA. Therefore, in order to maximize efficient use of time and resources, states should work closely with the appropriate EPA regional offices in executing each step of the modeling process. Coordination with the EPA during the modeling process will help increase the likelihood that the EPA will be able to approve the modeling-based attainment demonstration.

5. High Electricity Demand Days (HEDD)

The current modeling guidance addresses, among many other considerations, episode selection and accounting for potentially higher VOC and/or $NO_X$ emissions during high energy demand periods. A study has identified high $NO_X$ emissions from electric generating units (EGUs) in the Northeast Corridor on summer days when demand for electricity is high [17] and has labeled these days as ''High Electricity Demand Days'' (HEDD). This study indicates that $NO_X$ emissions from EGUs during periods of high electricity demand in the Northeast may be significantly greater than emissions that occur on an average summer day. This spike in $NO_X$ emissions is due to increased power demand on hot summer days to meet air conditioning

[15] State plans for single nonattainment areas that include more than one state (multi-state nonattainment areas) are also required to have photochemical modeling (*see* CAA section 182(j)(1)(B)).

[16] The modeling guidance can be found at the following Web site: *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf.*

[17] ''High Electric Demand Day and Air Quality in the Northeast.'' White Paper Prepared by the Northeast States for Coordinated Air Use Management. June 5, 2006. Available at: *http://www.nescaum.org/.*

and other electric power needs. High electricity demand days require production of additional power from load-following EGUs and/or peaking unit EGUs, which are less frequently used compared to base-load EGUs. In the Northeast Corridor, these units have tended to be less well controlled than base-load EGUs.

High energy demand summer days tend to coincide with ozone episodes, which may be in part due to the fact that $NO_X$ emissions on these days can greatly exceed average summer day $NO_X$ emissions from electric power generation. There has been some study of control measures to reduce $NO_X$ emissions on HEDDs.[18]

Since $NO_X$ emissions from electric power generation are a significant contributor to the total $NO_X$ emissions for many ozone nonattainment areas, states that experience this phenomenon should be careful to fully account for it by ensuring that these emissions are included in photochemical modeling of episode days on which the phenomenon occurs. In order to properly account for HEDD emissions, careful attention should be paid to the temporalization of emissions to the specific day and hour of the day when these emissions occur. We note that the current modeling guidance [19] already addresses episode selection and development of accurate emissions input information during peak ozone periods. We will consider whether additional updates to the modeling guidance are needed to address modeling of the HEDD phenomenon.

6. Modeled Attainment Test

Models are used to test whether control measures to be adopted in the SIP are likely to result in attainment of the standard. The modeled attainment test for the ozone NAAQS under the EPA's guidance uses a combination of ambient ozone data and modeled ozone concentrations to estimate future year air quality. The attainment test is applied at each monitor location within or near a designated nonattainment area. Models are used in a relative sense to estimate the response of measured air quality to future changes in emissions. Future air quality is estimated by multiplying recent monitored values by the modeled relative response to projected future changes in emissions.[20] The EPA additionally recommends application of an attainment test to be performed in unmonitored areas. The recommended attainment test methodology for unmonitored areas has been used in recent 8-hour ozone SIPs developed for the 1997 ozone NAAQS. To make it easier for states to apply the attainment tests, both the monitor-based test and the unmonitored area test have been incorporated in a software package called the ''Modeled Attainment Test Software'' (MATS). The MATS is available for no charge at: *http://www.epa.gov/scram001/modelingapps_mats.htm.*

7. What future year(s) should be modeled in attainment demonstrations?

The future modeling year should be selected such that all emissions control measures relied on for attainment will have been implemented by that year. Note that for purposes of the 1997 ozone NAAQS and as we are proposing here for the 2008 ozone NAAQS, control measures relied upon to demonstrate attainment should be implemented by the beginning of the last full ozone season prior to the area's attainment date. To demonstrate attainment, the modeling results for the nonattainment area must predict that emissions reductions implemented by the beginning of the last full ozone season preceding the attainment date will result in ozone concentrations that meet the level of the standard.[21] Because an area must attain ''as expeditiously as practicable,'' additional considerations are necessary before a future modeling year can be established. For example, although the maximum attainment date for a Moderate area designated in 2012 would be December 31, 2018, under the 2008 ozone NAAQS Classifications Rule, the state would need to conduct a RACM analysis (CAA section 172(c)(1)) to determine if it can advance the area's attainment date by at least a year.[22] Results of the RACM analysis may indicate attainment can be achieved earlier (e.g., by December 2016 or December 2017) through implementation of reasonably available control measures prior to the beginning of an earlier ozone season. For instance, if emission reductions sufficient to demonstrate attainment are implemented prior to the 2016 ozone season, then in this example the attainment year and the future projection year should be 2016. We strongly recommend that the state discuss the selection of the future year(s) to model with the appropriate EPA regional office as part of the modeling protocol development process.

8. Multi-State Nonattainment Areas

The CAA requirement for multi-state ozone nonattainment areas (CAA section 182(j)) requires each state in which a portion of a multi-state ozone nonattainment area is located to use photochemical grid modeling or any other analytic method determined by the Administrator to be at least as effective and to take all reasonable steps to coordinate, substantively and procedurally, the development, submittal and implementation of SIPs applicable to the various states within the nonattainment area. The EPA interprets CAA section 182(j) to require coordination on all aspects of nonattainment SIPs, including the development of an attainment demonstration.

[18] *See,* e.g., Chris James and Jeremy Fisher, Ph.D. Reducing Emissions in Connecticut on High Electric Demand Days (HEDD): A Report for the CT Department of Environmental Protection and the U.S. Environmental Protection Agency. July 25, 2008. Synapse Energy Economics, Inc. 22 Pearl St., Cambridge, MA 02139.

[19] *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf.*

[20] The EPA's guidance on attainment demonstrations (*Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, April 2007) recommends that states may supplement the attainment test with other evidence in a ''weight of evidence'' determination of whether the nonattainment area is likely to attain the NAAQS by its deadline. The EPA intends to recommend in a forthcoming update of this guidance that other evidence that can be considered includes recent monitored values that have been adjusted so that they better represent the air quality that would have existed in the absence of any unusual natural or anthropogenic events (if any) that influenced ozone concentrations on the monitored days. The EPA intends to apply certain eligibility conditions to this recommendation. Specifically, the EPA intends to apply an eligibility approach that is like the set of eligibility criteria in the Exceptional Events Rule. However, we will not apply the ''no exceedance but for'' concept that is part of the provision in 50.14(c)(3)(iv)(D) that limits the EPA approvals for data exclusion to situations in which there would have been no exceedance or violation of the NAAQS ''but for'' the event. In this way, the EPA guidance will effectively recommend that states can apply Exceptional Events Rule-like considerations to situations in which an event has exacerbated the level of a NAAQS exceedance (but that did not cause the exceedance in the ''but for'' sense) on historical days that occur during the ambient data base year period that is used in the attainment test to project future air quality. The EPA expects there to be limited situations where this potential adjustment would make a difference between future year estimated attainment and nonattainment. The EPA intends to work with state air agencies in the development of the planned update to our guidance on this topic.

[21] Note that for purposes of the 8-hour ozone NAAQS, a determination of attainment (or failure to attain), which EPA is required to make after the attainment date has passed, is based on the most recent 3 complete years of data prior to the area's attainment date. Attainment date extensions are only available if the 4th maximum 8-hour average ozone concentration in the attainment year is below the level of the standard.

[22] *See* section III.D.2 of this proposal for a discussion of RACM analysis requirements.

*C. What are the RFP requirements for the 2008 ozone NAAQS?*

1. Background

Areas that are designated nonattainment for ozone must achieve RFP toward attainment of the ozone NAAQS. Part D of the CAA contains three separate provisions regarding RFP. Under subpart 1, section 172(c)(2) contains a general requirement that nonattainment SIPs must provide for reasonable further progress; this provision does not define RFP, but provides authority for the Administrator to do so. Sections 182(b)(1) and 182(c)(2)(B) under subpart 2 contain specific percent reduction targets for ozone nonattainment areas classified as Moderate and above and Serious and above, respectively. For Moderate and above areas, section 182(b)(1) requires a 15 percent reduction in VOC emissions from the baseline anthropogenic emissions over the 6-year period between designation and the Moderate area maximum attainment date. For Serious and above areas, section 182(c)(2)(B) requires an additional 3 percent per year reduction in VOC emissions beginning 6 years after designation until the attainment date.[23] For the additional RFP requirement for Serious and above areas, section 182(c)(2)(B) allows $NO_X$ reductions to be substituted for VOC reductions under certain conditions. Note that the 15 percent requirement must be met by the end of the 6-year period regardless of whether the state attains the NAAQS prior to that point. The 3 percent per year requirement for Serious and above areas runs until the attainment date.

The Phase 2 Rule interpreted the requirements of subpart 2 as they would apply to areas for the 1997 ozone NAAQS. With respect to RFP, the Phase 2 Rule interpreted the section 182(b)(1) 15 percent RFP requirement such that an area that had already met the 15 percent RFP requirement for VOC under the 1-hour ozone NAAQS (for the first 6 years after the RFP baseline year for the 1-hour ozone NAAQS) would not have to fulfill that requirement again. Instead, Moderate areas would be treated like areas covered under section 172(c)(2), and Serious and above areas would be covered under section 182(c)(2)(B). For the purposes of the 1997 ozone NAAQS, the EPA interpreted section 172(c)(2) to require Moderate areas to obtain 15 percent ozone precursor emission reductions over the first 6 years after the baseline year for the 1997 ozone NAAQS, and interpreted section 182(c)(2)(B) to require Serious and above areas to obtain 18 percent ozone precursor emission reductions in that 6 year period. Under the section 172(c)(2) and 182(c)(2)(B) RFP requirements, $NO_X$ emission reductions could be substituted for VOC reductions. This provision of the Phase 2 Rule was upheld in *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009).

2. In general, what is the EPA proposing as the RFP requirements for the 2008 ozone NAAQS?

The EPA is proposing a number of provisions to address issues relevant to implementing RFP under the 2008 ozone NAAQS: (1) The timing for the submission of RFP plans; (2) restrictions on emission reduction measures that can be used to fulfill the RFP requirements under subpart 2; 3) the RFP plan requirements of section 182(b)(1) of the CAA for nonattainment areas classified as Moderate or higher under the 2008 ozone NAAQS for which no portion of such areas previously fulfilled the 15 percent RFP requirement for VOC in section 182(b)(1); (4) the RFP plan requirements for nonattainment areas classified as Moderate or higher under the 2008 ozone NAAQS which consist entirely of former nonattainment areas that under a prior ozone NAAQS fulfilled the 15 percent RFP requirement for VOC in section 182(b)(1); (5) the RFP plan requirements for nonattainment areas classified as Moderate or higher under the 2008 ozone NAAQS which consist partially of former nonattainment areas that under a prior ozone NAAQS fulfilled the 15 percent RFP requirement for VOC in section 182(b)(1); and (6) proposed procedures for calculating RFP targets. Hereafter in the discussion of RFP requirements within this section, when we use the term ''2008 nonattainment area'' we mean ''nonattainment area classified as Moderate or higher under the 2008 ozone NAAQS.''

a. What is the deadline for submitting RFP plans?

As detailed in section III.A of this preamble, the EPA is proposing two options regarding the deadline(s) for submittal of the various SIP elements required for an ozone nonattainment area based on its classification for the 2008 ozone NAAQS. The first option is that the required SIP elements would be due in the time frame provided for such elements in section 182, with the specified time periods running from the effective date of designation for the 2008 ozone NAAQS. Thus, the RFP plan addressing the first 6-year period for Moderate and higher classified areas would be due 3 years from the effective date of designation; and the RFP plan addressing the additional 3 percent per year requirement for Serious and higher classified areas would be due 4 years from the effective date of designation.

The second option is to give states the choice to either submit the various SIP elements required for an area according to the timeframes specified by statute or to submit all of the required SIP elements within 30 months of the effective date of designation for the 2008 ozone NAAQS; in other words, the state would submit one consolidated SIP, including all RFP obligations, no later than 30 months from the effective date of designation. For the same reasons discussed in section III.A of this preamble (related to SIP due dates), the EPA believes that it may be reasonable, and preferred by some states, to allow states to submit the RFP plans within 30 months in conjunction with all other required SIP elements.

We are soliciting comment on options for submission deadlines as listed in this section and section III.A.

b. Restrictions on Emission Reduction Measures That Can Fulfill the RFP Requirement

The CAA places certain restrictions on the emission reductions that are creditable toward meeting the RFP requirements. To be creditable, the reductions must meet the conditions in CAA sections 182(b) and 182(c), including that reductions:

- Must be from measures required in the SIP, in a title V permit, or from rules promulgated by the EPA;
- Must occur during the RFP period;
- May not come from the pre-1990 EPA rules for motor vehicle exhaust and evaporative emissions; and
- May not come from the EPA rules limiting the Reid vapor pressure (RVP) of gasoline that were implemented by 1992.[24]

We are proposing that, except as specifically provided in section 182(b)(1)(D) of the CAA, all SIP-approved or federally promulgated emissions reductions that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements, provided the reductions meet the standard requirements for

[23] CAA section 182(c)(2)(B) states that Serious and above areas must achieve additional reductions of at least 3 percent per year ''averaged over each consecutive 3-year period.'' Thus it is equivalent to a nine percent additional reduction in baseline emissions for each subsequent 3-year period.

[24] CAA section 182(b)(1)(D)(ii) states that ''Regulations concerning Reid vapor pressure promulgated by the Administrator by November 15, 1990, or required to be promulgated under section 7545(h) of this title'' are not creditable toward required RFP reductions.

creditability.[25] That is, to receive SIP credit, the reductions must be enforceable, quantifiable, permanent and surplus. We promulgated a regulatory provision adopting this same interpretation for purposes of implementing the 1997 ozone NAAQS. *See* 40 CFR 51.910(a)(2). CAA section 182(b)(1)(D) imposes limitations on specific measures for which states may take credit for RFP reductions required under CAA sections 182(b)(1) and 182(c)(2)(B).

We are also proposing that all emission reductions creditable toward meeting RFP requirements must be from sources located within the nonattainment area. Section C.4 below discusses this issue in further detail.

c. What are the RFP plan requirements for 2008 ozone nonattainment areas for which no portion of the area has previously been required to meet the 15 percent RFP requirement for VOC in section 182(b)(1) of the CAA?

Section 182(b)(1) of the CAA requires ozone nonattainment areas classified as Moderate or higher to submit a RFP plan to achieve a 15 percent reduction in VOC baseline emissions over a 6-year period following the baseline year. If the area is classified Serious or higher, section 182(c)(2)(B) of the CAA requires an additional RFP plan to achieve an average of 3 percent additional emissions reductions per year for each subsequent 3-year period after the conclusion of the initial 6-year RFP period specified by section 182(b)(1).

We are proposing that the RFP plan for a 2008 nonattainment area must provide for a 15 percent reduction in VOC emissions from the baseline emissions in the 6 years following the baseline emissions inventory year if no portion of that 2008 nonattainment area has already fulfilled the 15 percent RFP plan requirement for VOC.[26] If such 2008 nonattainment area is classified as Serious or higher, the RFP plan for that 2008 nonattainment area must in addition achieve an average of three percent additional emissions reductions per year for each subsequent 3-year period after the conclusion of the initial 6-year period specified by section 182(b)(1). We promulgated a similar regulatory provision adopting this interpretation for purposes of implementing the 1997 ozone NAAQS. *See* 40 CFR 51.910(a)(1)(i).

In the alternative, we are proposing to allow an area to meet the 15 percent RFP requirement in whole or in part with $NO_X$ reductions in lieu of VOC reductions if that area can demonstrate that it has in fact achieved a 15 percent reduction in VOC emissions from a 1990 baseline. There are two reasons that we believe it makes sense to allow areas to substitute $NO_X$ for VOC in the 15 percent RFP plans. First, our understanding of the effects of reductions of VOC and $NO_X$ on ambient ozone levels has greatly improved since the 1990 CAA Amendments were enacted, and there are technical tools more readily available to help states predict the combination of VOC and/or $NO_X$ that will be most effective in reducing ozone in a particular area. In many areas we now know that $NO_X$ reductions will have a far greater effect than VOC reductions on reducing ambient ozone concentrations. In fact, in some areas background levels of naturally-occurring VOC are so high that reductions in manmade VOC have limited effect on ozone. Since the purpose of the RFP provisions in section 182 is to foster the achievement of reasonable further progress toward attainment, we believe that it makes the most sense to allow states to credit toward the RFP requirement those reductions that an area most needs to reach attainment. Second, the mix of emissions across the country and in specific areas is very different than it was in 1990 because of emission controls that have gone into effect over the last 20 years. A variety of national and local VOC control measures affecting mobile and stationary sources have already substantially reduced the levels of manmade VOC. Since 1990, the EPA has issued aggressive national rules to reduce tailpipe VOC emissions from on-road vehicles and from non-road engines. The EPA has also reduced evaporative emissions and vehicle refueling emissions through vehicle onboard refueling vapor recovery systems. VOC emissions from most major industrial sectors have also been substantially reduced through controls required to meet relatively stringent standards for hazardous air pollutants. The EPA has also promulgated national rules limiting the VOC content of the most ubiquitous paints/coatings and consumer products. These efforts have substantially reduced the anthropogenic VOC emissions inventory such that additional area-specific VOC reductions will be increasingly difficult to achieve.

As a further alternative, if we do not finalize the proposal above to allow any area to substitute $NO_X$ reductions for VOC reductions where such area can demonstrate that it has achieved a 15 percent reduction in VOC emissions from a 1990 baseline, we are proposing to allow such substitution only for areas located in the Ozone Transport Region (OTR) that would be subject to the 15 percent RFP requirement for the first time as a designated nonattainment area for the 2008 ozone NAAQS. Although attainment areas in the OTR were not required to adopt 15 percent RFP plans under section 184 of the CAA, they were required to adopt certain VOC reduction measures such as enhanced vehicle I/M plans in metropolitan statistical areas (MSAs) with a population of 100,000 or more, and RACT for all sources covered by a control technique guideline (CTG). At the time of the 1990 Amendments it was expected that VOC reductions from those measures would account for a significant portion of the 15 percent RFP requirement for areas designated nonattainment. Thus, since attainment areas in the OTR were required to adopt and implement many of the same measures that applied in nonattainment areas, we are proposing that such areas should be treated as having met the 15 percent RFP requirement if they can demonstrate that they did, in fact, achieve a 15 percent reduction in VOC emissions between 1990 and 1996 (even though they of course would not have submitted a 15 percent plan as they were not subject to the 15 percent requirement at that time). In such a case, the area would be treated the same as a nonattainment area that previously met the 15 percent requirement, as discussed below in section III.C.2.d.[27] Specifically, these areas would still be required to submit a plan to achieve a 15 percent emission reduction, but could substitute $NO_X$ reductions for VOC in such plan.

[25] Note that section III.C.2.f. below discusses the EPA's proposal regarding removal of the requirement to calculate non-creditable emissions for pre-1990 vehicles.

[26] ''Fulfilled the 15 percent RFP plan requirement for VOC'' means EPA has approved an RFP plan for the geographic area as meeting the 15 percent RFP plan requirement for VOC specified in section 182(b)(1) of the CAA under a prior ozone NAAQS, whether it is the 1-hour ozone NAAQS or the 1997 8-hour ozone NAAQS.

[27] The EPA's official on-road emissions model, MOVES, currently allows states to model emissions in 1990 and 1999 and later years, but not in 1996. EPA will evaluate whether the capability of modeling emissions in 1996 needs to be added to MOVES, or whether some other methodology can be used for this analysis.

d. What are the RFP plan requirements for 2008 ozone nonattainment areas that consist entirely of one or more nonattainment areas for a former ozone NAAQS or pieces of nonattainment areas for a former ozone NAAQS where such areas fulfilled the 15 percent RFP plan requirement for VOC for that former ozone NAAQS?

This provision covers any 2008 nonattainment area [28] which consists entirely of a nonattainment area or portions of nonattainment areas for which we previously approved an RFP plan as meeting the 15 percent RFP plan requirement for VOC in section 182(b)(1) of the CAA. Such a 2008 nonattainment area could consist of one or more 1-hour nonattainment areas, one or more nonattainment areas under the 1997 ozone NAAQS, or a combination of nonattainment areas for either the 1-hour or 1997 ozone NAAQS. However, all portions of the area that are a part of the 2008 nonattainment area must have an approved 15 percent RFP plan for either the 1-hour or the 1997 ozone NAAQS.[29]

We are proposing that such 2008 nonattainment areas have met the CAA requirement for a 15 percent VOC reduction plan and are not required to fulfill that requirement again. As we did for the 1997 ozone NAAQS, we propose to interpret the RFP requirement in section 172(c)(2) to mean that a Moderate area must achieve a 15 percent reduction in baseline VOC emissions, but that $NO_X$ emission reductions may be substituted for the VOC reductions in the manner specified in section 182(c)(2)(C). Under section 182(c)(2)(B), Serious and higher classified areas would be required to achieve an average of 3 percent emission reductions per year for each 3-year period following the baseline year (i.e., a total of 18 percent emissions reduction in the first 6 years) and $NO_X$ emission reductions could be substituted as provided under section 182(c)(2)(C).

e. What are the RFP plan requirements for 2008 ozone nonattainment areas that include portions consisting of all or a piece of one or more nonattainment areas for a previous NAAQS and which fulfilled the 15 percent RFP plan requirement for VOC for that previous NAAQS and portions that have never been subject to or never have fulfilled the 15 percent RFP plan requirement for VOC for a previous NAAQS?

This provision addresses those areas that include all or part of a nonattainment area under a former ozone NAAQS that fulfilled the 15 percent RFP plan requirement for VOC and all or part of an area that was not subject to or did not meet the 15 percent requirement for a former ozone NAAQS. The most common situation in which this would arise is when a 2008 nonattainment area consists of a former nonattainment area and additional surrounding areas (e.g., all or part of surrounding counties) that have not previously been designated nonattainment for ozone.

For such 2008 nonattainment areas, we are proposing that the state choose between two approaches for addressing the 15 percent RFP requirement. First, the state could choose to treat the entire area as an area that never met the 15 percent requirement, and meet the requirements of subsection III.C.2.c of this section, described previously. Second, the state could choose to treat the 2008 nonattainment area as divided into two portions: the former non-RFP plan portion and the former RFP plan portion. For the former non-RFP plan portion of the 2008 nonattainment area, the plan would establish a separate 15 percent VOC reduction requirement under section 182(b)(1) of subpart 2. However, VOC emissions reductions to meet the 15 percent requirement may come from across the entire 2008 nonattainment area, provided that the former RFP plan portion of the area also has a VOC reduction target as part of its RFP plan for the 2008 ozone NAAQS. If the RFP plan for the 2008 ozone NAAQS for the former nonattainment area relies solely on $NO_X$ reductions, then the portion of the nonattainment area never before subject to nonattainment requirements is still responsible for the 15 percent VOC reductions.

For the former RFP plan portion of the 2008 nonattainment area, the RFP requirements in section 172(c)(2) will apply if the 2008 nonattainment area is classified as Moderate as described previously in this document in subsection III.C.2.d of this section. Also, as described in subsection III.C.2.d of this section, CAA section 182(c)(2)(B) RFP requirements will apply if the 2008 ozone NAAQS nonattainment area is classified as Serious or higher.

f. How should states account for non-creditable reductions when calculating RFP emission reduction targets?

Section 182(b)(1)(D) specifies four categories of control measures that are not creditable toward the 15 percent RFP requirement under CAA section 182(b)(1)(A): (i) Measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; (ii) regulations concerning RVP promulgated by November 15, 1990; (iii) measures to correct previous RACT requirements; and (iv) measures required to correct I/M programs. With the exception of the first category, reductions from these measures were achieved many years ago, so the question of creditability is moot for RFP credit for the 2008 ozone NAAQS. For the motor vehicle standards, a small amount of reduction is still occurring due to fleet turnover. In Appendix A to the preamble of the Phase 2 Rule (70 FR 71696, as amended by 71 FR 58498, October 4, 2006), we presented methodologies for accounting for non-creditable emission reductions consistent with requirements of section 182(b)(1)(D)(i) of the CAA. The procedures vary with the types of areas. The EPA also issued a memorandum that supplements the Appendix.[30] We are proposing as one alternative to eliminate the obligation for states to continue to perform this calculation because these reductions are now very small and will continue to further decrease in future years. The calculation of non-creditable reductions is based on the impact of pre-1990 model year vehicles on the total emissions inventory. In 2011, pre-1990 model year vehicles are estimated to account for only 2 percent of vehicle miles traveled (VMT), 5 percent of total on-road VOC emissions and 3 percent of total on-road $NO_X$ emissions using national estimates of fleet composition, activity and emissions from the EPA's latest emissions model. By 2017, the first year for which non-creditable reductions must be calculated for the 2008 ozone NAAQS, pre-1990 model year vehicles will be 27 years old and older. These vehicles will account for approximately 0.2 percent of total VMT, 0.6 percent of total on-road VOC emissions and 0.4 percent of total on-road $NO_X$ emissions

[28] 77 FR 30088, May 21, 2012.

[29] The following nonattainment areas were nonattainment for both the 1-hour and the 1997 ozone NAAQS, and remained the same size under the 2008 ozone NAAQS compared to the 1997 ozone NAAQS: Baltimore, MD; Los Angeles-San Bernardino Counties (West Mojave Desert), CA; Los Angeles-South Coast Air Basin, CA; Riverside County (Coachella Valley), CA; Sacramento Metro, CA; San Joaquin Valley, CA; and Ventura County, CA.

[30] Memorandum from William T. Harnett re: ''8-Hour Ozone National Ambient Air Quality Standards (NAAQS) Implementation—Reasonable Further Progress (RFP),'' August 15, 2006. *See* first Q & A.

in 2017, using national estimates of fleet composition, activity and emissions from the EPA's latest emissions model. Local results may vary, but the non-creditable reductions associated with the turnover of these vehicles everywhere will be a very small fraction of the total on-road VOC emissions inventory by 2017 and will continue to decrease over future years. Accounting for all other emission sources, on-road VOC emissions typically constitute less than half of the total VOC inventory and about half of the total $NO_X$ inventory, so these percentages would be further reduced in the context of the total emissions inventory. Calculating non-creditable reductions will continue to be a very resource-intensive process requiring multiple modeling runs and extensive staff time. We are proposing to remove the burden of performing this calculation for purposes of RFP for the 2008 ozone NAAQS based on the *de minimis* nature of these non-creditable reductions. If the final rule requires states to account for these non-creditable reductions, we are proposing in the alternative that the calculation should be performed as described in Appendix C to this preamble.

g. Alternative Approaches To Achieving RFP

In the spirit of the Executive Order 13563 titled, ''Improving Regulation and Regulatory Review,'' signed by President Barack Obama on January 18, 2011, which directs federal agencies to offer and support flexible, common sense approaches, the EPA is taking comment on allowing states to use additional alternative approaches to achieving RFP goals. One alternative is an air quality-based approach that would measure RFP in terms of actual ambient air quality improvements tied to an area's percent emission reduction requirements. Such an approach would involve work on the part of the state to translate an area's RFP emissions reduction targets (tons) into ozone improvement targets (ppb) based on air quality modeling or other appropriate analyses. The emission reduction targets for the area should be expressed in terms of the pollutant (VOC or $NO_X$) which, when reduced, is most effective in reducing ozone concentrations in the area. Under this approach, RFP milestones would be satisfied if the area implements the target emissions reduction strategies and achieves the targeted ozone air quality improvement over the relevant RFP assessment period. This approach would retain a state's accountability for making consistent incremental progress while focusing on the most direct measurement of improvement, namely air quality. A similar approach is already included in the implementation rules that govern SIP development for the $PM_{2.5}$ NAAQS (*See* 40 CFR 51.1009(g) and (h)).

Another alternative approach would be to adjust (or ''weight'') the amount of RFP credit given for reductions of individual species (or similar groups) of VOCs based on their ozone forming potential (i.e., photochemical reactivity). Accordingly, reductions of VOCs with relatively high photochemical reactivity would be given more credit toward RFP requirements and reductions of VOCs with relatively low photochemical reactivity would be given less credit toward those requirements. For example, reducing one ton of a highly reactive VOC (i.e., with 1.5 times the ozone forming potential of an average VOC) could be given a RFP credit of 1.5 tons, reducing one ton of a low reactive VOC (i.e., with 0.5 times the ozone forming potential of an average VOC) could be given a RFP credit of 0.5 tons, and reducing one ton of a VOC with average reactivity could be given a RFP credit of 1.0 tons. Such an approach provides an incentive for states to target those VOC reductions that will have the greatest impact on actual ozone formation. In order to use this approach, the EPA and/or states would need to develop more detailed operational parameters, guidelines or rules derived from scientific assessment.

For both of these alternative approaches, the EPA is seeking comment on the usefulness and practicality of the approach, and specifically on whether there is adequate legal basis under the CAA to approve SIPs that would employ these approaches.

3. What baseline year may states use for the emission inventory for the RFP requirement?

The baseline inventory for RFP is used as the starting point for determining a target level of emission reductions to meet the RFP requirement—in other words, it is the baseline from which creditable reductions are determined. Section 182(b)(1)(B) of the CAA, as amended in 1990, states that the term ''baseline emissions'' is defined as the total amount of actual VOC (or $NO_X$) emissions from all anthropogenic sources in the area during the calendar year 1990. The initial 6-year RFP period covered the 6 years following the baseline year, 1991–1996, ending in the year that areas classified as Moderate under the 1-hour NAAQS were required to attain that NAAQS.

For the 2008 ozone NAAQS, the EPA is proposing that states should use as the baseline year for RFP the calendar year for the most recently available triennial emission inventory at the time RFP plans are developed. We promulgated a regulatory provision adopting this same interpretation for purposes of implementing the 1997 ozone NAAQS. *See* 40 CFR 51.910(d). A triennial emissions inventory under the Air Emissions Reporting Requirements (AERR) Rule (73 FR 76539; December 17, 2008) is required for the year 2011 and was required to be submitted to the EPA by December 31, 2012. For the 1997 ozone NAAQS, our regulations also provided that a state has flexibility to use an alternative baseline year if it shows that the alternative year is appropriate and justifiable. We are proposing to allow similar flexibility for the 2008 ozone NAAQS.

A RFP baseline year of 2011 is analogous to the approach provided for RFP in the CAA as amended in 1990. The CAA required a 1990 baseline for the 15 percent RFP requirement which lined up the 6-year 15 percent RFP period with the 1996 attainment date for Moderate areas under the 1-hour NAAQS. For the 2008 ozone NAAQS, initial area designations were effective in 2012 and the 6-year RFP period from a baseline of 2011 (i.e., January 1, 2012–December 31, 2017) would line up reasonably well with the Moderate area attainment date of 2018. As noted above, the AERR Rule required states to report emissions for calendar year 2011 to the EPA by December 31, 2012. This is about 2.5 years before the July 20, 2015, deadline for 15 percent RFP plans to be submitted. The EPA believes this timing is reasonable for areas designated nonattainment in 2012 and allows time for states to develop and submit an RFP plan, as well as time to implement measures to satisfy the RFP requirement by December 31, 2017. If a state chooses 2011 as a baseline year for a Moderate area designated nonattainment in 2012, the 15 percent reduction requirement covers the period from January 1, 2012, to December 31, 2017. The 6-year period concludes one year prior to the December 31, 2018, attainment date. Areas using 2011 as a base year would thus have to achieve whatever additional emissions reductions are needed to provide for attainment of the standard by December 31, 2018. This corresponds to the approach taken in the Phase 2 Rule (70 FR 71615–71616).

However the EPA is also proposing that states have the option of selecting an appropriate and justifiable alternate

year as a baseline year for RFP. If states choose a pre-2011 baseline year, the EPA is proposing that the 6-year period for achieving the 15 percent reduction starts in January of the year following the selected baseline year. When a year prior to 2011 is chosen as the baseline year, the 6-year period thus concludes more than one year prior to the start of the attainment year for the area. In this situation, the EPA is proposing that the area is responsible for a 3 percent emissions reduction each year after the initial 6-year period has concluded up to the beginning of the attainment year. For example, if 2009 is chosen as a baseline year for a Moderate area, the 15 percent reductions cover the period from January 1, 2010 to December 31, 2015. The area would need to generate an additional 3 percent emissions reduction per year for the years 2016 and 2017. As in the Phase 2 Rule and consistent with CAA section 182(c)(2), Serious and higher classified areas would need to provide in their SIPs an additional average of 3 percent per year emission reduction over each subsequent year beyond the initial 6-year period through the attainment year (70 FR 71616).

We are proposing that for a multi-state nonattainment area, all states associated with the nonattainment area must consult and agree on the same alternate year to use as the baseline year for RFP.

4. Can emission reductions from sources located outside the nonattainment area boundary apply toward RFP?

a. Background

Under the EPA's initial Phase 2 Rule,[31] certain emission reductions from outside a nonattainment area can be credited toward meeting the 1997 ozone NAAQS RFP requirement. *See* 70 FR 71647–49. For the same reasons provided in our proposed rule [32] to revise this provision for the 1997 ozone NAAQS, the EPA is proposing to not allow states to rely on credit for emission reductions from outside the nonattainment area to meet RFP obligations for the 2008 ozone NAAQS.

The language in the CAA's baseline emissions provision for determining the emissions reductions required for RFP purposes (sections 182(b)(1)(B) and 182(c)(2)(B)) is almost identical to the language in the CAA's RACT provision (section 172 (c)(1)). The issue of taking credit for reductions from outside the nonattainment area was raised in the context of the RACT provision and decided by the court in *NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009). The court there held that ''the RACT requirement calls for reductions in emissions from sources in the area; reductions from sources outside the nonattainment area do not satisfy the requirement.'' *NRDC* at 1256. We note the similarity in language in the several provisions of the CAA, but also the difference between RACT, which is a source specific requirement, and RFP, which is not.

b. Proposal

The EPA is therefore proposing that for the 2008 ozone NAAQS states may not take credit for VOC or $NO_X$ reductions occurring outside the nonattainment area for purposes of meeting the 15 percent and 3 percent RFP requirements of sections 172(c)(2), 182(b)(1) and (c)(2)(B). This approach would mean that RFP credit for meeting the 15 percent VOC requirement for Moderate and above ozone nonattainment areas in section 182(b)(1) and the additional 3 percent per year requirement for Serious and above ozone nonattainment areas in section 182(c)(2)(B) could come only from emission reductions from within the nonattainment area. The EPA notes that the required 15 percent and 3 percent reductions are calculated from the baseline emissions inventory for the nonattainment area, which reflects only emissions within the nonattainment area. In nonattainment areas where there are few significant local emission sources, and thus relatively small emission inventories, the required reduction percentages would similarly translate into only small required emission reductions. Areas still can and should, where appropriate, rely on out-of-area reductions for purposes of demonstrating attainment. There is no limitation under the attainment demonstration provisions of the CAA that restricts states from considering outside-the-area reductions as part of the modeled attainment demonstration for an area. As EPA has previously said, in determining the attainment date that is as expeditious as practicable, the state should consider impacts on the nonattainment area of intrastate transport of pollution from sources within its jurisdiction, and potential reasonable measures to reduce emissions from those sources.

At the same time, the EPA recognizes that not allowing credit for reductions outside the nonattainment area will make it more challenging for some areas, such as the areas adjacent to the South Coast nonattainment area in California, namely, Coachella Valley, West Mojave Desert and Ventura County in California, to meet their RFP requirements and may foreclose some cost-effective opportunities for emissions reductions. Despite the court's opinion in *NRDC,* the EPA continues to believe that there remain valid policy reasons for giving states incentive to focus on obtaining emission reductions that are the most beneficial and cost effective for achieving air quality progress and attaining the ozone standards. The EPA believes there may be cases where the most beneficial and cost-effective reductions are from sources located outside the nonattainment area boundaries. In these cases, we believe it would be good policy to credit the emission reductions toward meeting RFP requirements. To this end, the EPA is also taking comment on whether there is a clear legal rationale for allowing credit for reductions outside the nonattainment area to satisfy the RFP requirements for the 2008 ozone NAAQS. We encourage commenters to consider how the baseline emission inventory should be determined if reductions from outside the nonattainment area were able to be creditable for RFP requirements. If the EPA receives comment that provides a clear legal justification for this approach, we will seriously consider including this approach in the final rule.

The EPA requests comments on the proposal and its implications for the 2008 ozone NAAQS.

*D. How do RACT and RACM requirements apply for 2008 ozone NAAQS nonattainment areas?*

1. Reasonably Available Control Technology

a. Background

Subpart 1 of part D of the CAA includes a requirement that an attainment plan must provide for the implementation of all RACM as expeditiously as practicable, including such reductions that may be obtained through RACT.[33] Subpart 2 requires Marginal ozone nonattainment areas to correct pre-1990 RACT requirements and requires Moderate and above areas to adopt RACT rules for all VOC and

[31] *See* Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2 (70 FR 71612, November 29, 2005).

[32] Reasonable Further Progress Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard (75 FR 80420, December 22, 2010).

[33] The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas'' and also in 44 FR 53762; September 17, 1979).

$NO_X$ sources covered by existing or new CTGs and for all other major sources of VOC and $NO_X$ (unless the state has received a $NO_X$ waiver). Additionally, states must adopt RACT for all VOC and $NO_X$ sources covered by a CTG, and for all other major sources of VOC and $NO_X$ in the OTR (CAA section 184(b)(1)).

Since the 1970s, the EPA has issued CTGs that establish presumptive RACT-level control requirements for various source categories. The CTGs usually identify a particular control level which the EPA recommends as being RACT. In some cases, the EPA has issued Alternative Control Techniques guidelines (ACTs) for source categories.[34] ACTs differ from CTGs in that they present a range for possible control options but do not identify any particular option as the presumptive norm for what is RACT. Section 183(c) of the CAA requires the EPA to ''revise and update [CTGs and ACTs] as the Administrator determines necessary.'' The EPA issued eleven new CTGs from 2006 through 2008.[35] For nonattainment areas classified as Moderate or higher, states are required to address RACT for the source categories covered by CTGs.

Some of the CTGs specify the minimum size of sources to which they apply. Where a CTG does not specify the minimum size of sources to which it applies or there is no CTG for a source category, states are required to apply the RACT requirement to sources in a nonattainment area that exceed the size threshold corresponding to the statutory definition of ''major stationary source.'' Section 302 of the CAA defines major stationary source as a source that emits 100 tons per year (tpy) or more of any air pollutant, and for ozone the air pollutants of concern are $NO_X$ and VOC. That 100 tpy threshold, however, is modified by subsections 182(c)–(f) of the CAA, which define a major source for Serious areas as a source that emits more than 50 tpy of VOC or $NO_X$; for Severe areas as a source that emits more than 25 tpy of VOC or $NO_X$; and for Extreme areas as a source that emits more than 10 tpy of VOC or $NO_X$.[36]

The CAA required states to submit RACT SIPs for Moderate and higher classified areas within 2 years after enactment of the 1990 CAA Amendments and required implementation as expeditiously as practicable but no later than May 31, 1995, or 54 and one-half months following enactment of the 1990 Amendments (i.e., no later than 30 and one-half months after the required RACT SIP submission date).

In considering modification to existing RACT guidance,[37] the EPA believes there are two principles worth emphasizing:

1. The implementation rules should conform closely to the clearly articulated goal of the CAA that states implement measures that provide for attainment of the ozone standard as expeditiously as practicable.

2. The implementation rules should enable, if not encourage, the adoption of emission reduction strategies that will be the most effective, and the most cost effective, at reducing ozone levels.

b. Proposal

i. Substantive Requirements

RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment area covered by a specific CTG source category. States must provide notice and opportunity for public comment on their RACT submission even where the state determines to certify that the existing provisions remain RACT or where the state submits a negative declaration. States must also submit appropriate supporting information for their RACT submission as described in the Phase 2 Rule. *See* 70 FR 71652.

States should use current EPA guidance and any other information available in making RACT determinations.[38] The EPA recognizes that existing CTGs and ACTs for many source categories have not been revised in a number of years. However, in most cases, more recent technical information is available in other forms, such as the BACT/LAER Clearinghouse; SIPs for other nonattainment areas, in particular those areas with higher classifications; the ''Menu of Control Measures'' for $NO_X$ and VOC; and emissions standards developed under CAA section 111(d) and NSR/prevention of significant deterioration (PSD) settlement agreements. As part of their RACT SIP submission, states should provide adequate documentation that they have considered control technology that is economically and technologically feasible. The analysis of economic and technological feasibility should be based on information that is current as of the time of development of the RACT SIP for the 2008 ozone NAAQS. In other words, it is not sufficient for states to rely on previous RACT determinations without considering more recent information. Where public commenters submit specific information to a state about controls that are alleged to be reasonably available in light of technological and economic feasibility, the state should consider such information in developing its RACT SIP. The EPA generally considers controls that have been achieved in practice by other existing sources in the same source category to be technologically and economically feasible. In some cases, states may conclude that sources already subject to RACT for the 1-hour and/or 1997 ozone NAAQS are also meeting the 2008 ozone NAAQS RACT requirement.

The EPA's $NO_X$ RACT guidance (Nitrogen Oxides Supplement to the General Preamble, 57 FR 55625; November 25, 1992) encouraged states to develop RACT programs that are based on ''area wide average emission rates.'' Additional guidance on area-wide RACT provisions is provided by EPA's January 2001 economic incentive program guidance titled, ''Improving Air Quality with Economic Incentive Programs.'' [39] Thus, the EPA's existing policy recognizes the approach of states submitting a demonstration as part of their $NO_X$ RACT SIP submittal showing that the weighted average $NO_X$ emission rate from sources in the nonattainment area subject to RACT meets $NO_X$ RACT requirements.

As part of their RACT submission, states have the option of demonstrating that compliance with a regional trading program by certain sources within a nonattainment area will achieve RACT-level reductions for those sources within the nonattainment area. The analysis would need to consider current control technology and cost effectiveness information as part of any such demonstration, and to show that the trading program achieves emission

[34] *See http://www.epa.gov/air/ozonepollution/SIPToolkit/ctgs.html.*

[35] CTGs updated from 2006 through 2008: Industrial Cleaning Solvents; Offset Lithographic Printing and Letterpress Printing; Flexible Package Printing; Flat Wood Paneling Coatings; Paper, Film, and Foil Coatings; Large Appliance Coatings; Metal Furniture Coatings; Miscellaneous Metal and Plastic Parts Coatings; Fiberglass Boat Manufacturing; Miscellaneous Industrial; and Automobile and Light-Duty Truck Assembly Coatings.

[36] Note, however, that an area may have obligations under anti-backsliding provisions based on classification under the 1-hour and/or the 1997 8-hour ozone NAAQS. Those obligations may result in a lower major source threshold for purposes of applying RACT than the classification associated with the 2008 ozone NAAQS.

[37] May 18, 2006 memorandum from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, ''RACT Qs & As—Reasonable Available Control Technology (RACT): Questions and Answers.''

[38] EPA's CTGs and ACTs are located at *http://www.epa.gov/air/ozonepollution/SIPToolkit/ctgs.html.*

[39] *http://www.epa.gov/ttn/oarpg/t1/memoranda/eipfin.pdf.*

reductions greater than or equal to reductions that would be achieved through a source-specific application of RACT in the nonattainment area.

In the preamble to the Phase 2 Rule, the EPA explained that states could, in certain circumstances, conclude that sources (EGUs and some non-EGUs), in compliance with the requirements of regional trading programs established by the $NO_X$ SIP Call and/or the Clean Air Interstate Rule (CAIR), have met their ozone $NO_X$ RACT requirements with respect to the 1997 ozone standards. *See* 70 FR 71612, 71656–58. EPA subsequently modified its guidance regarding when compliance with CAIR may satisfy $NO_X$ RACT requirements for EGUs in CAIR states. *See* 72 FR 31727, 31730–37.

On July 10, 2009, in *NRDC* v. *EPA,* the Court of Appeals for the DC Circuit remanded the provision of the Phase 2 Rule determining that compliance with the $NO_X$ SIP Call satisfies $NO_X$ RACT because EPA had failed to show that compliance with the $NO_X$ SIP Call would achieve at least RACT-level reductions in each nonattainment area.[40] The court held that ''[b]ecause the EPA has not shown that the $NO_X$ SIP call compliance will result in at least RACT-level reductions in emissions from sources within each nonattainment area, the EPA's determination that compliance with the $NO_X$ SIP call satisfies the RACT requirement is inconsistent with the ''in the area'' requirement and thus violates the plain text of [section] 172 (c)(1).'' [41] Additionally, the court emphasized that ''the RACT requirement calls for reductions in emissions from sources in the area; reductions from sources outside the nonattainment area do not satisfy the requirement . . . Accordingly, participation in the $NO_X$ SIP call would constitute RACT only if participation entailed at least RACT-level reductions in emissions from sources within the nonattainment area.''

The EPA believes that the concerns expressed by the court about the agency's approach to the $NO_X$ RACT requirement for sources, including EGUs, and the emissions reductions required by the $NO_X$ SIP Call raise significant questions about the EPA's approach to the comparable issues related to compliance with the CAIR.

The EPA has not analyzed whether participation in either the $NO_X$ SIP call or CAIR would achieve reductions at least equivalent to what would be achieved if RACT requirements were applied on a source-specific basis in nonattainment areas for the 2008 ozone NAAQS. The analysis the EPA prepared for the Phase 2 Rule addressed only nonattainment areas for the 1997 ozone NAAQS. Moreover, since source-specific control assumptions would need to be developed in order to determine the overall reduction level achievable in a nonattainment area through source-specific application of RACT, the EPA believes states are in a better position than EPA to conduct this analysis.

The statute, as interpreted by the court in *NRDC* v. *EPA,* provides that RACT SIPs must demonstrate that RACT-level emission reductions are achieved within the relevant nonattainment area. Thus, and for the reasons explained above, it does not allow states to, without providing such demonstration, rely upon the participation of a source in a regional cap-and-trade program to satisfy RACT requirements. However, as noted above, states retain the option of demonstrating that compliance with a regional trading program by certain sources within a nonattainment area, will achieve RACT-level reductions for those sources within the nonattainment area.

For clarity, we also note that a state has discretion to require beyond-RACT reductions from any source, and has an obligation to demonstrate attainment as expeditiously as practicable. Thus, states may require VOC and $NO_X$ reductions that are ''beyond RACT'' if such reductions are needed in order to provide for timely attainment of the ozone NAAQS.

The EPA is soliciting comment on modifying existing guidance to provide additional flexibility in implementing the section 182(b)(2) RACT requirements. In some nonattainment areas additional reductions of anthropogenic VOC emissions have been scientifically demonstrated to have a limited impact on reducing ozone concentrations. We are soliciting comment on whether such a demonstration is an appropriate factor to consider in determining what is ''reasonable'' in a RACT analysis. This modification to existing guidance is being explored in the spirit of the Executive Order 13563 titled, ''Improving Regulation and Regulatory Review,'' signed by President Barack Obama on January 18, 2011, which directs governmental agencies to offer and support flexible, common sense approaches. The EPA recognizes that limited state and federal resources need to be used where they will produce the best environmental benefit, and that we should attempt to accommodate air quality management approaches that will be a better use of public and private resources and lead to more expeditious attainment.

In some areas, additional VOC reductions may be of little value in further reducing ozone, and may be far less effective than $NO_X$ reductions (which may be quicker to implement and lower cost). Under such circumstances, the EPA is taking comment on whether state RACT determinations could take into consideration, in the evaluation of what is economically feasible, the potential air quality benefit (or lack thereof) of further VOC controls. Commenters should discuss the specific circumstances and limitations to which an air quality benefit factor would apply. For example, commenters should address whether this approach would (or can) be limited to cases where it can be scientifically demonstrated that additional VOC controls are ineffective in reducing ambient ozone concentrations. In addition, commenters are encouraged to provide specific examples of where modeling has demonstrated that anthropogenic VOC reductions have ''negligible effect.'' Commenters, if possible, should also provide a defensible threshold for defining ''ineffective,'' and define a test for concluding that the effect of additional VOC reductions would be ''negligible.'' The EPA is also interested in comments that address whether this flexibility should be provided on an individual source basis, or also on a source category basis. Any approaches suggested by commenters should also address how public health and welfare will be impacted. Finally, commenters are encouraged to provide an explanation as to the specific legal basis for supporting the suggested approach.

For VOC sources subject to MACT standards, our policy is to allow states to streamline their RACT analysis by including a discussion of the MACT controls and considerations relevant to VOC RACT. Historically, in many cases, states have been able to rely on MACT standards for purposes of showing that a source has met VOC RACT. States need to take care to ensure that any MACT controls relied on for RACT adequately address all VOCs and not just those that are also HAPs. For example, if a manufacturer complies with MACT by reformulating products to remove HAPs but the production process still releases non-HAP VOCs, the state would need to justify why the MACT meets the RACT requirement for that source or would need to develop an

[40] In view of its decision in *North Carolina* v. *EPA,* in which the Court had previously remanded the CAIR, the Court deferred consideration of the litigant's challenge insofar as it related to the CAIR program.

[41] *See NRDC* v. *EPA,* 571 F.3d 1245.

appropriate RACT rule to address non-HAP VOCs.

ii. Timing

We are proposing two alternatives for when states would be required to submit RACT SIPs. Under the first alternative, states with Moderate and higher classified areas would be required to submit RACT SIPs within the period specified in section 182(b) with the time running from the effective date of an area's designation for the 2008 ozone NAAQS (i.e., within 2 years from the effective date of designation). Under the second alternative, states would be given the choice of submitting RACT SIPs for Moderate and higher classified areas either as part of a consolidated SIP submittal 30 months after the effective date of designation, or within the period of time provided in section 182(b), as described above. The 30-month option would align the submission date for the RACT SIP with the proposed submission date for other SIP elements for the area's classification in order to relieve states of the added burden that can result from processing different SIP elements at different times.

We are also proposing a specific deadline by which RACT measures are to be implemented for the 2008 ozone NAAQS. Section 182(b)(2) requires RACT measures to be implemented as expeditiously as practicable, but no later than May 31, 1995, which was 54 and one-half months from the date of enactment of the 1990 CAA Amendments. This date was also near the beginning of the ozone season for many nonattainment areas at the time of enactment, and ensured that RACT measures were required to be in place during most of the last two ozone seasons before the Moderate area attainment date of November 15, 1996. For the 2008 ozone NAAQS, we are proposing that areas must implement RACT measures as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of a nonattainment designation. Nonattainment designations for all areas of the country were effective July 20, 2012. RACT measures for these areas would be required to be implemented by January 1, 2017. This allows a comparable amount of time for sources to meet RACT requirements as originally anticipated under the 1990 CAA Amendments, and ensures that RACT measures are required to be in place throughout the last two ozone seasons prior to the Moderate area attainment date of December 31, 2018.

If we finalize the ''state's choice'' approach for when SIP elements would be due, those states which chose to submit a consolidated SIP within 30 months of designation would have a little longer to develop and submit their RACT SIPs, but affected sources would have a little less lead time to implement the adopted requirements. Thus, any emission reductions due to RACT would not be delayed due to the slightly later RACT SIP submission date. The EPA believes this is a reasonable interpretation of the statute in this case.

2. Reasonably Available Control Measures (RACM)

The RACM requirement, which is set forth in section 172(c)(1) of the CAA, applies to all nonattainment areas that are required to submit an attainment demonstration. The EPA has issued policies and procedures related to RACM. Specifically, the EPA has issued guidance that interprets the RACM provision to require a demonstration that the state has adopted all reasonable measures (including RACT) to meet RFP requirements and to demonstrate attainment as expeditiously as practicable and thus that no additional measures that are reasonably available will advance the attainment date or contribute to RFP for the area.[42] [43] [44] We believe that this guidance should continue to apply for purposes of the 2008 ozone NAAQS.

The determination of whether a SIP contains all RACM requires an area-specific analysis that there are no additional economically and technologically feasible control measures (alone or cumulatively) that will advance the attainment date.[45] The EPA's RACM policy, as outlined in the April 16, 1992, General Preamble, indicates that states should consider all candidate measures that are potentially available for the particular nonattainment area that could advance the attainment date by 1 year.[46] The April 16, 1992, General Preamble[47] also provides that ''any measure that a commenter indicates during a public comment period is reasonably available should be closely reviewed by the planning agency to determine if it is in fact reasonably available for implementation in the area in light of local circumstances.'' Although states should consider all available measures, including those being implemented in other areas, a state must adopt measures for an area only if those measures are economically and technologically feasible and will advance the attainment date or are necessary for RFP. This interpretation of the section 172 requirements has been upheld by several courts. *See,* e.g., *Sierra Club* v. *EPA,* et al., 294 F.3d 155 (D.C. Circuit, 2002).

*E. Does the 2008 ozone NAAQS result in any new inspection and maintenance (I/M) programs?*

No new I/M programs are currently required as a result of areas being designated and classified nonattainment for the 2008 ozone NAAQS. The applicable requirements for ozone nonattainment areas that are required to adopt I/M programs are described in sections 182(a)(2)(B), 182(b)(4), 182(c)(3), and 184(b)(1)(A) of the CAA and further defined in section 51.350 (''Applicability'') of the I/M rule (40 CFR part 51, subpart S). Under these cumulative requirements, Moderate ozone nonattainment areas in urbanized areas with 1990 Census populations of 200,000 or more are required to adopt basic I/M programs, while Serious and higher classified ozone nonattainment areas outside of the northeast OTR with 1980 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs. Within the OTR, MSAs with populations of 100,000 or more are required to adopt enhanced I/M programs, regardless of attainment status. Currently, all the nonattainment areas meeting the criteria for mandatory I/M under the 2008 ozone NAAQS are already operating I/M programs due to being designated nonattainment and classified as Moderate or above under an earlier ozone standard. If a Marginal 2008 ozone nonattainment area meeting the population cutoff for mandatory I/M is ever in the future reclassified to Moderate or a higher classification, then an I/M program meeting the SIP

[42] ''State Implementation Plans; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas'' 44 FR 20372 at 20375 (April 4, 1979). ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule.'' 57 FR 13498 at 13560 (April 16, 1992).

[43] ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. *www.epa.gov/ttn/oarpg/t1/memoranda/revracm.pdf.*

[44] Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: ''Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs.'' *www.epa.gov/ttn/oarpg/t1/memoranda/121400_racmmemfin.pdf.*

[45] *Ibid.*

[46] ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule.'' 57 FR 13507 (April 16, 1992). The discussion of RACM in that document contains other relevant history concerning the RACM requirement.

[47] 57 FR 13498.

submittal and program implementation requirements of the I/M rule would be required at that time.

1. If new I/M programs are required in the future, what are the SIP and implementation requirements?

On April 7, 2006, the EPA finalized a suite of revisions to the I/M rule (71 FR 17705) to address the implementation of I/M under an 8-hour ozone NAAQS. The revised rule included deadlines for 8-hour nonattainment areas that were tied to the effective date of a given area's designation and classification under the 8-hour ozone NAAQS. Specifically, the April 2006 rulemaking established a deadline for submission of an I/M SIP no later than one year after the effective date of the area's nonattainment designation and classification for the 8-hour ozone standard. This rule was originally applied for purposes of the 1997 8-hour NAAQS, but it remains applicable to the 2008 8-hour NAAQS. In addition to establishing the I/M SIP submittal schedule, the April 2006 rulemaking also set a deadline of no later than 4 years after the effective date of designation and classification by which the I/M program in question would actually begin testing vehicles.

2. Should the EPA allow more time for states to submit future I/M SIPs?

Since the 2006 I/M rulemaking, the EPA has revisited the question of how much time it takes to submit an I/M SIP based upon the degree to which the modeling work needed to demonstrate attainment is closely linked to the modeling work required to design an I/M program that meets the area's attainment needs. Put simply, areas need to determine together the amount of emissions reductions needed for attainment and the amount of emissions reductions to get from different sectors and strategies (including I/M), before designing an I/M program capable of achieving the necessary reductions to demonstrate attainment. Requiring submittal of an I/M program in advance of an attainment demonstration for the current or future ozone standard could result in significant unnecessary work on modeling, SIP revisions, and implementation, if revisions to the I/M program are later deemed necessary.

Because control strategy decisions and the modeling needed to perform the attainment demonstration are intertwined with decisions and modeling needed to design the local I/M program to such a high extent, the EPA is requesting comment on its proposal to align deadlines for the attainment SIP and the I/M SIP so that both are due at the same time.[48] Commenters are asked to take the following factors into consideration when providing comments on this portion of the proposed rulemaking: Areas' need to analyze various I/M program designs to determine which combination of program parameters is capable of meeting the emission reduction needs of the attainment SIP; the need to secure legal authority when some of the potentially affected state legislatures may only meet for 2–4 months during any given legislative session; the time needed to promulgate a regulation; and the impact on timing of other, potentially competing resource demands that will be placed on states as a result of the need to meet current and/or future ozone standards.

3. How is modern I/M different from the last time new I/M programs were required?

It is important to note that much has changed since I/M programs were required under the original, November 5, 1992, I/M Rule. At that time, an I/M program would have included testing a vehicle's tailpipe emissions, in some cases using a treadmill-like device (dynamometer), so that the emissions were measured under more realistic driving conditions rather than at rest (idle). Dynamometer-based tests also allowed for measurement of $NO_X$ emissions, which was not possible at idle. The equipment needed for these types of programs was expensive compared to today's next-generation alternatives and the test itself was time consuming as the vehicle needed to be secured to the dynamometer and then driven through the test cycle.

Beginning with the 1996 model year, vehicles have been equipped with a computerized system known as onboard diagnostics or OBD. The OBD system monitors the vehicle's emission control system continuously and illuminates the vehicle's dashboard ''Check Engine'' light if a problem is detected. The vehicle's computer stores information on the type of malfunction detected, and is therefore able to provide repair shops with information on the type of repair that is needed. The EPA estimates that about 80 percent of the national vehicle fleet is already equipped with an OBD system and that by the time any potential new I/M programs would be required to begin operation, about 90 percent of the national vehicle fleet will be OBD equipped. As a result, the EPA believes that I/M programs will no longer need to use tailpipe testing, and can instead rely on a simple, fast and inexpensive interrogation of the OBD system.

There are many ways to conduct OBD system checks but all involve a relatively inexpensive scanner. The scanner is connected to a port in the vehicle and the tool downloads information from the vehicle's computer. This type of testing can be done either in a centralized testing facility, directly at a repair shop, or even remotely using telematics technology. Compared to earlier vehicle test methods, next-generation I/M testing through OBD system checks is substantially quicker, less invasive, less costly to implement and ideally suited to innovative testing strategies such as remote inspections using cellular or telematic technologies, self-serve testing kiosks and even mail-in data loggers, none of which were practical under the previous generation of tailpipe tests and all of which are available for use in today's and future I/M programs.

The EPA believes that OBD technology can change not only the way vehicles are tested but also whether vehicles need to be independently tested at all. This is because OBD offers vehicle owners all the information they need regarding whether or not their vehicle will pass or fail an I/M inspection. Simply put, if the ''Check Engine'' light is on, the vehicle will fail. This capability of OBD to provide immediate driver feedback suggests some as-yet untested but nevertheless intriguing alternatives to traditional I/M.

One such alternative—the EPA believes—would include programs that offer some vehicle owners free or subsidized repairs of vehicles with lit ''Check Engine'' lights. Should such a program result in the same number of vehicles being repaired as would be the case in a traditional I/M program, then the program in question would be considered functionally equivalent to I/M. The choice of how to fund these repairs would rest with the state but could include collecting a fee equivalent to what would otherwise be charged for testing from all registrants, requiring vehicle insurance providers or a state to cover the cost of repairing the vehicle when the ''Check Engine'' light comes on, partnering with local vocational-technical schools to provide repair services, making driving with a lit ''Check Engine'' light on a secondary traffic offense (similar to driving without a seat belt or working headlights in some states), etc. Ultimately, program equivalency would

[48] As discussed in section III.A of today's proposal, the EPA is soliciting comment on alternative deadlines for attainment SIP submissions. The EPA is here soliciting comment on aligning the deadline for I/M submittal with those alternative deadlines.

not depend upon how repairs are funded but rather on the number of relevant repairs accomplished by the program. Similarly, programs that accelerate the retirement of vehicles in need of emission-related repairs or that significantly prompt older vehicles to be replaced by cleaner technology could be considered equivalent to I/M if the amount of emission reductions achieved equals or exceeds what would be achieved by a traditional enhanced I/M program.

The EPA is requesting comments on these or other ideas for ''right sizing'' I/M for the current and future fleet. Comments should address how proposals will meet the minimum statutory requirements for I/M while still achieving I/M's primary goal of reducing emissions from the fleet in-use and supporting vehicle maintenance and emission repair.

*F. How does transportation conformity apply to the 2008 ozone NAAQS?*

1. What is transportation conformity?

Transportation conformity is required under CAA section 176(c) to ensure that transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit projects are consistent with (''conform to'') the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Transportation conformity applies to areas that are designated nonattainment, and to those former nonattainment areas that have been redesignated to attainment since 1990 and have a CAA section 175A maintenance plan (''maintenance areas'') for transportation-related criteria pollutants: Carbon monoxide, ozone, nitrogen dioxide, and particulate matter.

The EPA's Transportation Conformity Rule (40 CFR 51.390 and Part 93, subpart A) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. The EPA first promulgated the Transportation Conformity Rule on November 24, 1993 (58 FR 62188), and subsequently published several amendments. For example, the EPA published a final rule on July 1, 2004 (69 FR 40004) that provided transportation conformity procedures for state and local agencies under the 1997 ozone NAAQS, among other things. For further information on transportation conformity rulemakings, policy guidance and outreach materials, *see* the EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/index.htm*.

2. Why is the EPA discussing transportation conformity in this proposed rulemaking?

We are discussing transportation conformity in this proposed rulemaking in order to provide affected parties with information on when transportation conformity must be implemented for the 2008 ozone NAAQS and how we plan to make the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS with respect to transportation conformity. Affected parties would include state and local transportation and air quality agencies, metropolitan planning organizations (MPOs) and the U.S. Department of Transportation (the DOT) (40 CFR 93.102).

3. When would transportation conformity apply to areas designated nonattainment for the 2008 ozone NAAQS?

Transportation conformity for the 2008 ozone NAAQS applies 1 year after the effective date of nonattainment designations for that standard. This is because CAA section 176(c)(6) and 40 CFR 93.102(d) provide a 1-year grace period from the effective date of initial designations before transportation conformity applies in areas newly designated nonattainment for a particular pollutant and standard.

4. How would the 1-year transportation conformity grace period apply?

The transportation conformity grace period applies to all areas designated nonattainment for the 2008 ozone NAAQS. Metropolitan areas are urbanized areas that have a population greater than 50,000 and a designated MPO responsible for transportation planning per 23 U.S.C. 134. In general, within 1 year after the effective date of the initial nonattainment designation for a given pollutant and standard, the area's MPO and the DOT must make a conformity determination with regard to that pollutant and standard for the area's transportation plan and TIP. The conformity requirements for donut areas,[49] including the application of the 1-year conformity grace period, are generally the same as those for metropolitan areas. MPOs and any adjacent donut areas must continue to meet conformity requirements in nonattainment and maintenance areas for the 1997 ozone NAAQS during the grace period, in addition to any other applicable standards. If, at the end of the grace period, the MPO and the DOT have not made a transportation plan and TIP conformity determination for the relevant pollutant and standard, the area would be in a conformity ''lapse.'' During a conformity lapse, only certain projects can receive additional federal funding or approvals to proceed. The practical impact of a conformity lapse will vary from area to area.

Isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of an MPO (40 CFR 93.101). Conformity requirements for isolated rural nonattainment and maintenance areas can be found at 40 CFR 93.109(g). An isolated rural area would be required to make a conformity determination only at the point when a new transportation project needs funding or approval. This point may occur significantly after the 1-year grace period has ended. *See* the EPA's July 1, 2004, final rule for further background on how the EPA has implemented this conformity grace period for the 1997 ozone NAAQS in metropolitan, donut and isolated rural areas (69 FR 40008–40014).[50]

5. What flexibilities exist for isolated rural areas?

As discussed previously in this proposal, for transportation conformity purposes, isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of an MPO (40 CFR 93.101). In general, ozone nonattainment and maintenance areas with populations of less than 50,000 would be considered to be isolated rural areas for transportation conformity purposes because the DOT only requires an MPO to be established when an area's population exceeds 50,000.

The Transportation Conformity Rule contains a number of flexibilities that apply to isolated rural areas. As discussed previously, they are not required to determine conformity by the end of the 1-year grace period that applies for new nonattainment areas, since isolated rural areas do not have MPOs and do not have transportation plans that are subject to the requirements to demonstrate conformity on a periodic basis. Isolated rural areas are only required to demonstrate conformity when a non-exempt Federal Highway Administration or Federal

[49] For the purposes of transportation conformity, a ''donut'' area is the geographic area outside a metropolitan planning area boundary, but inside a designated nonattainment or maintenance area boundary that includes an MPO (40 CFR 93.101).

[50] Also, see the EPA's transportation conformity Web site for more information, including EPA's ''Transportation Conformity Guidance for 2008 Ozone NAAQS Nonattainment Areas'' at: *www.epa.gov/otaq/statesresources/transconf/2008naaqs.htm*.

Transit Administration project in the nonattainment or maintenance area requires funding or approval. Experience has shown that isolated rural areas have few projects that require a transportation conformity determination. Another available flexibility is that isolated rural areas may choose from several alternative conformity tests that may be used for analysis years beyond the last year for which the SIP has established a motor vehicle emissions budget. These alternative tests are described in 40 CFR 93.109(g)(2)(ii)(A)–(C). We also note that since these areas do not have transportation plans or TIPs, they would never experience a conformity lapse.

6. Does transportation conformity apply for the 1997 ozone NAAQS once that standard is revoked?

The CAA only requires transportation conformity in areas that are designated nonattainment or maintenance for a given pollutant and standard. Therefore, transportation conformity would no longer apply for purposes of the 1997 ozone NAAQS as of the time that standard (and thus an area's designation for that standard) is revoked. In other words, existing 1997 ozone NAAQS nonattainment and maintenance areas, regardless of their designation for the 2008 ozone NAAQS, would no longer be required to demonstrate transportation conformity for the 1997 ozone NAAQS after the 1997 ozone NAAQS is revoked. The EPA revoked the 1997 ozone NAAQS for transportation conformity purposes in the Classifications Rule for the 2008 ozone NAAQS. The revocation will become effective on July 20, 2013, 1 year after the effective date of designations for the 2008 ozone NAAQS. Under our current Transportation Conformity Rule, the latest approved or adequate emission budgets for a previous ozone NAAQS (i.e., the 1997 or the 1-hour ozone NAAQS) would continue to be used in conformity determinations for the 2008 ozone NAAQS until emission budgets are established and found adequate or are approved for the 2008 ozone NAAQS. 77 FR 14981–2.

7. What impact will the implementation of the 2008 ozone NAAQS have on a state's Transportation Conformity SIP?

Since we are not proposing to make revisions to our Transportation Conformity Rule in this proposal, states with previously approved Transportation Conformity SIPs should not need to revise those SIPs, unless they need to do so to ensure that existing state regulations apply in the appropriate newly designated areas. However, if this is the first time that transportation conformity will apply in a state, such a state is required to submit a SIP revision that covers the three specific transportation conformity requirements that are delineated in CAA section 176(c)(4)(E). These specific requirements are consultation procedures and written commitments to control or mitigation measures associated with conformity determinations for transportation plans, TIPs or projects. 40 CFR 51.390. Additional information and guidance can be found in EPA's ''Guidance for Developing Transportation Conformity State Implementation Plans'' (*http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf*).

*G. What requirements for general conformity apply to the 2008 ozone NAAQS?*

1. What is the purpose of the general conformity regulations?

Section 176(c) of the CAA requires that before a federal entity takes an action affecting air quality in a state, it must make a determination that the proposed action will not interfere with the SIP or the state's ability to attain and maintain the NAAQS. In November 1993, the EPA promulgated two sets of regulations to implement section 176(c). One set, known as the Transportation Conformity Rules (described previously in this proposal), deals with approval and funding of highway and mass transit projects. The other set, known as the General Conformity Regulations, deals with all other federal activities. Besides ensuring that federal actions will not interfere with the SIP, the general conformity program also fosters communications between federal agencies and state/local air quality agencies, provides for public notification of and access to federal agency conformity determinations and allows for air quality review of individual federal actions. In 1995, Congress limited the application of section 176(c) to nonattainment and maintenance areas only.

2. How are federal actions in nonattainment or maintenance areas addressed?

Federal agencies must demonstrate that their new actions occurring in a nonattainment or maintenance area will conform with the SIP by showing they will not (1) cause or contribute to any new violation of any standard in respective nonattainment and maintenance areas; (2) interfere with provisions in the applicable SIP for maintenance of any standard; (3) increase the frequency or severity of any existing violation of any standard; or (4) delay timely attainment of any standard or any required interim emissions reductions or other milestone. Information on what federal actions are covered and how to demonstrate conformity are found in 40 CFR part 93 subpart B. On March 24, 2010, former Administrator Lisa P. Jackson signed the General Conformity Final Rule ''Revisions to the General Conformity Regulations,'' which was published April 5, 2010 (75 FR 17254–17279). More information on the general conformity program is available at *http://www.epa.gov/air/genconform/*.

3. General Conformity for the 2008 Ozone NAAQS

a. What de minimis emission levels will apply for ozone precursors?

For the ozone precursors VOC and $NO_X$, the existing *de minimis* emission levels that are set forth in the EPA's General Conformity Regulations at 40 CFR 93.153(b)(1) continue to apply to the 2008 ozone NAAQS. Those levels were based on the definition of a major stationary source for NSR programs as established by sections 182, 183 and 302 of the CAA. Federal actions estimated to have an annual net emissions increase less than the *de minimis* levels are not required to demonstrate conformity under the General Conformity Regulations. The current *de minimis* levels are identified in Table 1.

TABLE 1—*De Minimis* EMISSION LEVELS FOR VOC AND $NO_X$

| Type of ozone area | VOC tons/year | $NO_X$ tons/year |
|---|---|---|
| Extreme Nonattainment | 10 | 10 |
| Severe Nonattainment | 25 | 25 |
| Serious Nonattainment | 50 | 50 |
| Other ozone Nonattainment areas outside an ozone transport region | 100 | 100 |

TABLE 1—*De Minimis* EMISSION LEVELS FOR VOC AND $NO_X$—Continued

| Type of ozone area | VOC tons/year | $NO_X$ tons/year |
|---|---|---|
| Other ozone Nonattainment areas inside an ozone transport region | 50 | 100 |

b. What impact will implementation of the 2008 ozone NAAQS have on a state's General Conformity SIP?

We are not proposing to make revisions to our General Conformity Regulations in this proposal. States with approved General Conformity SIPs should not need to revise those SIPs, unless they need to do so to ensure the existing regulations apply in the appropriate newly designated areas.

c. Are there any other impacts related to general conformity based on implementation of the 2008 ozone NAAQS?

As noted above, we are not proposing any revisions to the General Conformity Regulations at this time. However, as areas develop SIPs for the 2008 ozone NAAQS, we recommend that state and local air quality agencies work with federal agencies with major facilities that are subject to the General Conformity Regulations (e.g., commercial airports, ports and large military bases) to establish an emission budget for those facilities in order to facilitate future conformity determinations. Such a budget could be used by federal agencies in determining conformity or identifying mitigation measures if the budget level is included and identified in the SIP.

One federal activity subject to general conformity requirements is prescribed burning. The EPA recognizes that prescribed fire in some instances must be employed for natural resource management purposes and prevention or control of wildfires. The use of prescribed fire presents federal agencies, states and tribes with the challenge to balance and integrate two public policy goals, (1) to allow fire to function, as nearly as possible, in its natural role in maintaining healthy wildland ecosystems; and (2) to protect public health and welfare by mitigating the impacts of air pollutant emissions on air quality. The EPA encourages states and tribes to work with federal agencies to develop Smoke Management Programs (SMPs) and use Basic Smoke Management Practices (BSMPs) that identify the responsibilities of Federal Land Managers and state/tribal air quality managers to coordinate fire activities, minimize air pollutant emissions, manage smoke from prescribed fires for resource benefits, ensure the safety of burners and those in the forest/urban interface and establish emergency action programs to mitigate the impacts on the public. To reduce administrative burden on federal agencies, the EPA's April 5, 2010 revisions, to its General Conformity Regulations (75 FR 17254) provided flexibilities in 40 CFR 93.153(h) and (i) for prescribed fires to meet general conformity requirements using SMPs and BSMP.

4. When would general conformity apply to areas designated nonattainment for the 2008 ozone NAAQS?

General conformity for the 2008 ozone NAAQS applies 1 year after the effective date of nonattainment designations for that standard. This is because CAA section 176(c)(6) (which applies to general conformity as well as to transportation conformity) provides a 1-year grace period from the effective date of initial designations before general conformity determinations are required in areas newly designated nonattainment for a particular pollutant and standard.

5. How does the 1-year grace period apply to general conformity determinations?

As discussed previously in this proposal, CAA section 176(c)(6) applies to both transportation and general conformity. Therefore, the EPA's April 2010 revisions to its the General Conformity Regulations (*see* 75 FR 17277, April 5, 2010) apply the grace period for the purposes of general conformity in the same manner as for transportation conformity.

6. How would the revocation of the 1997 ozone NAAQS affect general conformity requirements?

Our proposal to revoke the 1997 ozone NAAQS at the time the final SIP Requirements Rule is published in the **Federal Register** means that general conformity requirements under the 1997 ozone NAAQS would end after the 2008 ozone NAAQS general conformity requirements begin.

*H. What are the requirements for contingency measures in the event of failure to meet a milestone or to attain?*

1. Background

Contingency measures are additional emissions control measures states must implement in the event a nonattainment area fails to meet an RFP milestone or fails to attain by its attainment date. Under the CAA, nonattainment areas that are classified under subpart 2 of part D of title I as Moderate, Serious, Severe or Extreme must include in their SIPs contingency measures consistent with section 172(c)(9), and those classified as Severe or higher must include contingency measures that are also consistent with section 182(c)(9). These contingency measures must be fully adopted rules or measures that are ready for implementation quickly upon failure to meet milestones or attain. Per EPA guidance,[51] these measures should represent 1 year's worth of reductions, or approximately 3 percent of the baseline emissions inventory. For additional background information on contingency measures, *see* 68 FR 32802 (June 3, 2003) and 70 FR 71650 (November 29, 2005) (the proposed and final Phase 2 Rule).

Guidance developed by the EPA in 1993 specified the content of the contingency measures. This guidance indicated that for areas classified Moderate and higher that had completed the initial 15 percent VOC reductions, contingency measures could be a mixture of VOC and $NO_X$ reductions. The guidance indicated that of the 3 percent emissions reductions required, 0.3 percent had to be VOC emissions reductions, allowing the remaining 2.7 percent of emissions reductions to be $NO_X$ emissions reductions.

2. Proposal

The EPA is proposing to interpret the contingency measure requirement for the 2008 ozone NAAQS in the same manner it has interpreted that requirement for the 1-hour and 1997 ozone NAAQS, with the exception of the content of the contingency

[51] August 23, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, to Regional Air Directors, ''Guidance on Issues Related to 15 Percent Rate-of-Progress Plans.''

measures, as discussed below. The EPA is proposing that the contingency measures required for Moderate and above areas under CAA sections 172(c)(9) and 182(c)(9) must provide for the implementation of specific measures if the area fails to meet any applicable milestone. These measures must be submitted for approval into the SIP as adopted measures that would take effect without further rulemaking action by the state or the Administrator upon a determination that an area failed to attain or meet the applicable milestone. Contingency measures should represent 1 year's worth of progress for the nonattainment area, which would be achieved while the area is revising its plan. Where appropriate, federal measures providing ongoing reductions into the future can be used as contingency measures. Innovative measures such as energy efficiency programs or renewable energy programs that meet the requirements of CAA section 172(c)(9), as well as section 182(c)(9) for areas classified as Serious or higher, can also be used as contingency measures.

Regarding content of the 1 year's worth of emissions covered by the contingency measures, the EPA believes that prior contingency measure guidance specifying a minimum of 0.3 percent of the emission reductions (i.e., one-tenth of the total 3 percent emission reduction requirement) must be from VOCs is no longer necessary. The EPA is proposing that for Moderate and above areas that have completed the initial 15 percent VOC reduction required by CAA section 182(b)(1)(A)(i), the 3 percent emissions reductions of the contingency measures may be based entirely on $NO_X$ controls if that is what the state's analyses have demonstrated would be most effective in bringing the area into attainment. There is no minimum VOC requirement.

We are soliciting comment on a contingency measure issue for nonattainment areas classified as Extreme, based on past state experience developing control plans for Extreme areas. The CAA in section 182(e)(5) allows the EPA to approve an Extreme area attainment plan that relies, in part, on the future development of new control technologies or improvements of existing control technologies. This discretion is available as long as the state has demonstrated that: all reasonably available control measures, including RACT, have been included in the plan; the area's RFP demonstration during the first 10 years after designation does not rely on anticipated future technologies; and the state has submitted enforceable commitments to develop and adopt contingency measures in the event that anticipated future technologies do not achieve planned reductions.

If an Extreme area qualifies for the discretion authorized by section 182(e)(5), it could be argued that it is unreasonable to expect the state to provide for the contingency measures required by sections 172(c)(9) and 182(c)(9). Indeed, it is hard to know how an area whose attainment SIP can include measures that are not fully developed would be able to identify contingency measures that are more specific. And while the CAA does not limit these measures to ''feasible'' measures, we do not believe that such areas should be required to adopt unreasonable or draconian measures when all reasonable candidate contingency measures will already have been employed in the plan to meet the RACM and RFP requirements. In this case it could be argued that the section 182(e)(5) contingency measure provision is the only reasonable way to meet the section 172(c)(9) and 182(c)(9) contingency measure requirements. Accordingly, the EPA is soliciting comments on how Extreme areas that can demonstrate they have implemented all feasible measures for purposes of their RFP SIPs and their RACM analyses can legally address CAA contingency measure requirements.

3. Additional Guidance for States That Use a Federal Measure as a Contingency Measure

The EPA has a long-standing practice of allowing federal measures to be used as contingency measures as long as they provide emissions reductions in the relevant years in excess of those needed for attainment or RFP. The EPA has interpreted this policy as applying to federal measures that have already been adopted, which would include emissions reductions from fleet turnover to lower emitting on-road vehicles and non-road equipment such as on-road vehicles certified to Tier 2 light-duty vehicle emission standards.[52] The EPA has approved the use of federal measures to meet contingency measure requirements in several EPA actions approving 1-hour and 8-hour ozone SIPs. (62 FR 15844, April 3, 1997), (62 FR 66279, December 18, 1997), (66 FR 30811, June 8, 2001), (66 FR 586 and 66 FR 634, January 3, 2001) (74 FR 1903, January 14, 2009). We plan to continue to allow areas to use future reductions from promulgated federal measures as contingency measures for the 2008 ozone NAAQS, consistent with our practice for both the 1-hour and 1997 ozone NAAQS.

States using on-road motor vehicle fleet turnover as a contingency measure should establish and submit, as part of the SIP containing the contingency measure, motor vehicle emissions budgets (MVEBs) consistent with the use of on-road fleet turnover as a contingency measure. Such budgets would help to ensure that the emissions reductions attributed to the on-road fleet turnover contingency measure are actually available in the event that the contingency measure is triggered and would be available to serve the purpose intended by the SIP. For example, if an area is required to attain the 2008 ozone NAAQS in 2018 and the SIP includes VOC and $NO_X$ emissions reductions resulting from on-road fleet turnover as a contingency measure in the event that the area fails to attain by 2018, the SIP for that area should include VOC and $NO_X$ MVEBs for 2019 (the year after the attainment date) that are consistent with the use of the on-road fleet turnover contingency measure. Having such budgets would help to ensure that reductions from a fleet turnover contingency measure would be surplus and available for the SIP in the event that contingency measures are triggered.

*I. How do the NSR requirements apply for the 2008 ozone NAAQS?*

1. NSR Requirements for the 2008 Ozone NAAQS

The NSR programs contained in parts C and D of title I of the CAA are preconstruction review and permitting programs applicable to new or modified major stationary sources of air pollutants regulated under the CAA. In attainment and unclassifiable areas outside the OTR, the requirements under part C apply under the PSD program. In nonattainment areas and throughout the OTR, the program is implemented under the requirements of part D, under the nonattainment NSR program. Collectively, we commonly refer to the PSD and nonattainment NSR programs together as the ''major NSR programs.''

The regulations for the major NSR programs are contained in 40 CFR

[52] Fleet turnover is the change in model year composition of the local motor vehicle fleet. The composition of the motor vehicle fleet changes as new vehicles enter the fleet and old vehicles are removed. Generally, this results in a decrease in fleet average $NO_X$ and VOC emissions each year as older model year vehicles certified to less stringent emission standards leave the fleet and are replaced by newer vehicles certified to more stringent standards. The emission impacts of fleet turnover outside of California are currently calculated using EPA's MOVES emission factor model. 75 FR 9411, March 2, 2010. In California these emissions impacts are currently calculated using EMFAC2007.

51.166 and 52.21 for PSD, and 51.165, 52.24 and part 51, Appendix S for nonattainment NSR. Among other things, in unclassifiable and attainment areas outside of the OTR, the PSD program requires a new major source, or a major modification to an existing source, to install best available control technology (BACT) and conduct an air quality impact analysis, including an analysis of potential impacts on Class I areas (*see* CAA sections 162, 165(a)(3), 165(a)(4), 165(a)(5) and 165(d)).

Section 165(a)(3) of the CAA provides that in order to obtain a PSD permit the owner or operator of a proposed facility must, among other things, demonstrate that ''emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any . . . national ambient air quality standard in any air control region.'' The EPA has generally interpreted this requirement to include any NAAQS that is in effect at the time a permit is issued.[53] *See, e.g.,* 73 FR 28321, 28324, 28340 (May 16, 2008); Memorandum from Stephen D. Page, Director, Office of Air Quality Planning & Standards, ''Applicability of the Federal Prevention of Significant Deterioration Permit Requirements to New and Revised National Ambient Air Quality Standards'' (April 1, 2010). Accordingly, since the May 27, 2008, effective date of the 2008 ozone NAAQS, permit applications for new major stationary sources and major modifications have been subjected to the PSD program requirements for ozone under two sets of circumstances: first, prior to the designation of areas based on the 2008 ozone NAAQS, sources locating in areas designated attainment or unclassifiable for the 1997 ozone NAAQS; and second, on and after the July 20, 2012 effective date of area designations for the 2008 ozone NAAQS, sources locating in areas designated as attainment or unclassifiable for both the 1997 and 2008 ozone NAAQS. In all cases, the permit applicants must, among other things, demonstrate that the proposed project's emissions increase will not cause or contribute to a violation of the 2008 ozone NAAQS.

For purposes of determining individual source impacts with respect to the 2008 ozone NAAQS, PSD permit applicants and permitting authorities should continue to follow the current practice described in Appendix W to 40 CFR part 51, which is to consult with the applicable EPA regional office to determine the appropriate means of addressing such impacts. 40 CFR part 51, App. W, § 5.2.1(c). Although those applicants must demonstrate that the proposed source or modification will not cause or contribute to a violation of the 2008 ozone NAAQS, that demonstration does not necessarily require the permit applicants to perform new air quality modeling. *See* 40 CFR 51.166(k)(1) and 52.21(k)(1) (requiring source impact analysis); *see also* 40 CFR part 51, App. W, § 5.2.1(c) (explaining that the choice of methods to assess the impact of an individual source on the ozone NAAQS depends on the nature of the source and its emissions, and that appropriate methods are determined in consultation with the EPA regional office on a case-by-case basis). As appropriate, after consultation with the applicable EPA regional office, the demonstration can be made using modeling performed previously for air quality planning purposes or with other forms of qualitative or quantitative analysis, as has generally been the case in past permits. The adoption of the 2008 ozone NAAQS does not change that approach.

Following the July 20, 2012, effective date of area designations and classifications for the 2008 ozone NAAQS, and in keeping with the general policy that the permit issued to a major new source or major modification must satisfy the applicable permit requirements in effect as of the date of permit issuance, the requirements to be satisfied by the permit applicant in an area designated nonattainment for the 2008 ozone NAAQS will have depended on the area's highest nonattainment classification, whether for the 2008 ozone NAAQS or a previous ozone NAAQS for which the area remains nonattainment. *See* section IV of this proposal for a more detailed description of anti-backsliding requirements. Accordingly, some pending permits that were originally being reviewed under the PSD requirements but not yet issued were to have been (or may need to be) revised to adequately reflect the area's new status as nonattainment for the 2008 ozone NAAQS. For example, if an area designated as attainment or unclassifiable for the 1997 ozone NAAQS was designated as nonattainment for the 2008 ozone NAAQS, any permit issued on or after the July 20, 2012, effective date of the new nonattainment designation (and classification) must satisfy the requirements for nonattainment NSR. In an area that was already designated as nonattainment for the 1997 ozone NAAQS at the time it was designated nonattainment for the 2008 ozone NAAQS, the source would need to ensure that its permit application applies the appropriate nonattainment NSR requirements (e.g., the applicable major source thresholds and offsets) consistent with the area's new classification under the 2008 ozone NAAQS as reflected in the SIP and the final NSR anti-backsliding provisions for the 2008 ozone NAAQS, as discussed in section IV.

Some states may already have had in place a nonattainment NSR program consistent with the applicable part D requirements of the Act that can be directly applied to areas designated nonattainment for the 2008 ozone NAAQS and that were not designated nonattainment for the 1997 ozone NAAQS as of the July 20, 2012, effective date of the designations for the 2008 ozone NAAQS. For nonattainment areas in states with SIPs containing a generic requirement to issue nonattainment NSR permits in areas designated as nonattainment, those permit requirements for the 2008 ozone NAAQS became automatically effective upon designation.

For a newly designated 2008 ozone nonattainment area in a state with a SIP that specifically lists the areas in which nonattainment NSR requirements under part D apply, or in a state which currently has no approved nonattainment NSR program, there will be an interim period between the July 20, 2012, designation date and the date when the state amends its SIP either to list any new nonattainment area(s) or to include a part D plan. During this interim period, nonattainment NSR requirements are governed by the EPA's Emission Offset Interpretative Ruling codified in appendix S to 40 CFR part 51. In general, appendix S requires new or modified major sources in nonattainment areas to meet the lowest achievable emission rate (LAER) and obtain sufficient offsetting emissions reductions to assure that the new or modified major sources will not interfere with the area's progress toward attainment. Readers should refer to 40 CFR part 51, appendix S for a complete understanding of these and other appendix S permitting requirements.

Section 110(a)(2)(C) of the CAA establishes a general duty on the state to include a program in its SIP that regulates the modification and construction of any stationary source as necessary to assure that NAAQS are

[53] However, the EPA has also recognized that it has discretion to grandfather, under appropriate circumstances, permit applications that are pending at the time a new or revised NAAQS comes into effect from the requirement to demonstrate that a major new source or modification does not cause or contribute to a violation of a new or revised NAAQS. Since the NAAQS has been in effect since 2008, the EPA does not believe any grandfathering is necessary and proposes no such action here.

achieved. This general duty exists during all periods, including the period between the effective date of a new nonattainment area designation and the date when a state has an EPA-approved nonattainment NSR program satisfying the applicable part D requirements. Although section 110(a)(2)(C) does not contain specific requirements a state must follow for issuing major source permits during the interim period, the EPA's regulations at 40 CFR 52.24(k) require the state to follow 40 CFR part 51, appendix S, during this time. The availability of the waiver provision in section VI of appendix S is limited by the court's ruling in *NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009). In the EPA's Phase 2 Rule for the 1997 ozone NAAQS, the EPA revised section 52.24(k) to eliminate language stating that if a nonattainment area did not have an approved nonattainment NSR program within 18 months after designation, a construction ban would apply. 70 FR 71612 (November 29, 2005). The effect was to extend the applicability of appendix S, including the section VI waiver provision, to cover the full period from the date of designation to the date on which the EPA approved the nonattainment NSR SIP.

In *NRDC* v. *EPA* (571 F.3d 1245 (D.C. Cir. 2009)), the court considered the petitioners' general objections to the NSR waiver provision in section VI of appendix S, as well as the EPA's elimination of the 18-month limit on the applicability of that section. The court dismissed the petitioners' general objections as ''untimely'' but vacated ''the elimination of the 18-month time limit for NSR waivers under Appendix S'' on the ground that it violated section 172(e) of the CAA (571 F.3d at 1276). The EPA intends to revise section 52.24(k) to reflect the court's vacatur of the extension of the 18-month time limit for section VI of appendix S. In the meantime, as a result of the vacatur, no section VI waivers may be granted beyond 18 months from the date of designation.

2. Facilitating New Source Growth in Nonattainment Areas

a. Offset Banks

The Act requires new and modified major sources in nonattainment areas to secure emissions reductions (i.e., ''offsets'') to compensate for the proposed emissions increase. States can help facilitate continued economic development in a nonattainment area by establishing offset banks or registries. Such banks or registries can help new or modified major stationary source owners meet offset requirements by streamlining identification and access to available emissions reductions. Several states have established offset banks to help ensure a consistent method for generating and transferring $NO_X$ and VOC offsets.[54] Offsets are generated by emissions reductions that meet specific creditability criteria set forth by EPA regulations.[55] 40 CFR 51.165(3)(ii)(A)–(J).

b. Interpollutant Offset Substitution

States can make it easier for new or modified major sources to satisfy the offset requirements in an area by establishing interpollutant offset substitution provisions. Such provisions create additional flexibility in meeting offset requirements by allowing $NO_X$ emissions reductions to satisfy VOC offset requirements and vice versa. The appropriate exchange rate for substitution is determined by the state for each area consistent with the attainment needs of the area and must be approved by the EPA.

c. Economic Development Zones

Section 173(a)(1)(B) of the CAA authorizes the Administrator, in consultation with the Secretary of Housing and Urban Development (HUD), to identify areas within nonattainment areas as ''zone(s) to which economic development should be targeted.'' In these zones, states are able to assist new or modified major sources in meeting the nonattainment area offset requirement by setting aside growth ''allowances'' that serve as a pool of offsets to be tapped by such sources. The advantage of creating an offset pool specifically for a CAA economic development zone (EDZ) relative to relying on a traditional offset bank is that the offsets can be fully owned and controlled by the state, and the offsets do not need to be obtained from facility-specific emissions reductions or shutdowns in the nonattainment area. Accordingly, this provision is especially well suited to address the needs of the manufacturing sector and small businesses. The EPA is willing to work with HUD and states to identify potential areas.

In the context of the 1997 ozone NAAQS, the EPA previously worked with Arkansas officials to create a CAA EDZ in Crittenden County, which is part of the Memphis ozone nonattainment area (*see* 71 FR 8857, February 21, 2006). The EPA identified Crittenden County as a CAA EDZ after consultation with the Secretary of HUD to review qualification information associated with HUD-implemented economic development programs. We also evaluated socio-economic statistics for Crittenden County in comparison with similar information for other U.S. counties, and we reviewed air quality modeling of the Memphis nonattainment area provided by the Arkansas Department of Environmental Quality demonstrating that a specified growth allowance pool was consistent with timely attainment of the 1997 ozone NAAQS. After reviewing this information, the Administrator determined that the EDZ designation would help the citizens of Crittenden County without jeopardizing the clean air goals of the Greater Memphis area. The Memphis area has since attained the 1997 ozone NAAQS and the Arkansas portion of the Memphis nonattainment area was redesignated to attainment on March 24, 2010.

*J. What are the emission inventory and emission statement requirements?*

1. Emission Inventory Requirements

Emission inventories are critical for the efforts of state, local and federal agencies to attain and maintain the NAAQS that the EPA has established for criteria pollutants, including ozone. Pursuant to section 110(a)(2)(F)(ii) of the CAA, states must submit emission inventories containing information regarding the current emissions of criteria pollutants and their precursors. The EPA first codified regulations to implement CAA section 110(a)(2)(F)(ii) in 40 CFR part 51, subpart Q in 1979 and amended them in 1987.

The 1990 CAA Amendments established new emission inventory requirements applicable to certain areas that were designated nonattainment for certain pollutants. First, CAA section 182(a)(1) requires that Marginal and above ozone nonattainment areas submit a base year emission inventory for the nonattainment area 2 years after designation as nonattainment in 1990. For areas designated nonattainment for the 2008 ozone NAAQS, we are proposing that the base year emission inventory submission be due no later than 2 years after the effective date of designation, or alternatively, 30 months following the effective date of designation under the consolidated SIP submittal option described in section III.A of this preamble.

[54] *See,* for example, emission reduction credit banking programs in Ohio (OAC Chapter 3745–1111) and California (H&SC Section 40709).

[55] *See* the EPA's ''Improving Air Quality with Economic Incentive Programs'' document at *http://www.epa.gov/region07/air/nsr/nsrmemos/eipfin.pdf.* For additional memoranda and guidance documents, *see http://www.epa.gov/region7/air/nsr/nsrindex.htm.*

Second, CAA section 182(a)(3)(A) requires that states submit periodic emission inventories every 3 years after the initial base year inventory for Marginal and above ozone nonattainment areas. The periodic inventory must include emissions of VOC and $NO_X$ for point, nonpoint and mobile sources (on-road and non-road). On December 4, 2008, the EPA promulgated the AERR rule (40 CFR 51, subpart A). The AERR requires states to submit comprehensive statewide 3-year cycle emission inventories (2008, 2011, 2014, etc.) regardless of an area's attainment status. The EPA thinks it would be appropriate for states with periodic inventory obligations under 182(a)(3)(A) to rely on their 3-year cycle inventory as described in the AERR to satisfy their 182(a)(3)(A) periodic inventory obligation. In cases where a state will use its 3-year cycle inventory to meet its 182(a)(3)(A) inventory obligation, we are further proposing that the emissions reporting requirements of the AERR be applied to determine all of the data elements required for such inventories. (*see,* e.g. Tables 2A, 2B, 2C and 2D of 40 CFR part 51, subpart A, Appendix A).

For all inventories that are used in developing RFP plans or attainment demonstrations, mobile source emissions should be estimated using the latest emissions models, data and planning assumptions. The latest approved models should be used to estimate emissions from on-road and non-road sources, in combination with the latest available estimates of VMT, vehicle population, and/or equipment activity. States are advised to check the EPA Web pages for the mobile source models and to consult with the EPA Office of Transportation and Air Quality and their regional office to determine the versions of models to use for their SIPs for the 2008 ozone NAAQS.

Currently, the most recently approved model for estimating on-road emissions in states outside of California is MOVES2010 [56] which initially was approved for use in SIPs on March 2, 2010 (75 FR 9411).[57] The EPA has subsequently released two minor updates to MOVES2010, MOVES2010a and MOVES2010b that are also approved for use in SIPs. The on-road emissions can be generated either through inventory mode (via MOVES) or through emission rates mode (via SMOKE–MOVES [58]). Guidance on using MOVES as well as information on the current version of MOVES that has been approved for use in SIPs and transportation conformity is available at: *http://www.epa.gov/otaq/models/moves/index.htm.*

Emissions from non-road equipment should be estimated with the latest official version of the EPA's NONROAD model, and other appropriate methods for estimating emissions from sources not covered by these models. Links to **Federal Register** notices and policy guidance memos on the latest approved versions of MOVES and NONROAD can be found at *http://www.epa.gov/otaq/models.htm.* States should consult the guidance document ''Emission Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/R–05–001 (updated November 2005) and submit inventories that are appropriate for each nonattainment area and consistent with this guidance.

As indicated above, some inventories submitted to meet the requirements of section 182(a)(1) and 182(a)(3)(A) may be used in the development of RFP plans and/or attainment demonstrations. As such, the EPA requires the methodologies used to develop these inventories to be clearly documented and the inventories themselves to be subject to public participation requirements and formal approval/disapproval by the EPA.[59]

In guidance titled, ''Public Hearing Requirements for 1990 Base-Year Emissions Inventories for Ozone and Carbon Monoxide Nonattainment Areas,'' September 29, 1992, the EPA set forth its interpretation of a ''*de minimis''* deferral of the public hearing requirement and the requirement for the EPA to approve or disapprove certain emissions inventories under section 110(k).[60] The EPA is proposing to follow this guidance in implementing the emissions inventory requirements under CAA sections 182(a)(1) and 182(a)(3)(A) for purposes of the 2008 ozone NAAQS. Under this approach, where emission inventories are used in the development of an RFP plan or attainment demonstration, states can defer the public hearing on these inventories until the time the areas adopt and submit their RFP plans and/or attainment demonstrations that rely on such inventories. The EPA would not take action to approve or disapprove such inventories until the state completes the state public participation process. If a state opts to submit a consolidated SIP submittal, this should not be an issue.

2. Source Emission Statements

Section 182(a)(3)(B) of the CAA requires Marginal and above areas to submit an emissions statement within 2 years of enactment of the CAA Amendments of 1990. Specifically it provides that the emission statement must: ''. . . require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the state with a statement, in such form as the Administrator may prescribe (or an equivalent alternative developed by the state), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after the date of the enactment of the CAA Amendments of 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.''

We published guidance on source emission statements in a July 1992 memorandum titled, ''Guidance on the Implementation of an Emission Statement Program.'' A memorandum titled, ''Emission Statement Requirements Under 8-hour Ozone NAAQS Implementation,'' dated March 14, 2006, clarified that the source emission statement requirement under the CAA was applicable to all areas designated nonattainment for the 1997 ozone NAAQS and classified as Marginal or higher under subpart 2, part D, title I of the CAA. This requirement similarly applies to all areas designated

[56] MOVES2010 refers to the initial version of the model that was approved for use in SIPs and regional transportation conformity analyses on March 2, 2010, as well as subsequent minor upgrades to the model such as MOVES2010a and MOVES2010b.

[57] EMFAC is the model used to estimate on-road mobile source emissions in California. The latest version of the model that has been approved for SIP and conformity purposes is EMFAC2011. *See* 78 FR 14533 (March 6, 2013).

[58] For more information, *see http://www.smoke-model.org/index.cfm.*

[59] In comparison, the AERR emissions data are submitted by the states to the EPA, electronically via the Emission Inventory System to the National Emissions Inventory (NEI), without public review. The states submit AERR data to the NEI inventory 12 months after the NEI inventory year (i.e., calendar year 2014 NEI inventory data are submitted by December 31, 2015). The NEI process provides for the states to review the data as collected by the EPA before the EPA officially publishes the data. (Under the current process, the EPA would intend to publish the data for the 2014 NEI in June of 2016, 6 months after the AERR data is required to be submitted to the EPA.)

[60] CAA section 110(k) lists the actions that the EPA may take on SIP submissions, including approval and disapproval of the SIP.

nonattainment for the 2008 ozone NAAQS and classified as Marginal or higher under subpart 2. The EPA is proposing this SIP submittal be due 2 years after the effective date of designations or, alternatively, no later than 30 months after the effective date of designations as part of a consolidated SIP submission as described previously in this proposal. Most areas that need an emission statement program already have one in place due to a nonattainment designation for an earlier ozone NAAQS. If an area has a previously approved emission statement rule in force for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS. The state should review the existing rule to ensure it is adequate and, if it is, may rely on it to meet the emission statement requirement for the 2008 ozone NAAQS.

We note that regardless of whether states submit their emissions inventory statements within 2 years of the effective date of designations, or within 30 months of the effective date of designations as part of a consolidated SIP submission, this proposed rule will ensure that, consistent with the intent of section 182(a)(3)(B), states will submit their first emission statements no later than 3 years following the effective date of designations for the 2008 NAAQS. We are soliciting comments on our interpretation of the emission statement requirements under section 182(a)(3)(B) as they would apply to areas designated nonattainment for the 2008 ozone NAAQS.

*K. What are the ambient monitoring requirements?*

Ozone monitoring data play an important role in designations, classifications, control strategy development and related implementation activities. The EPA's ambient monitoring requirements are contained in 40 CFR part 58. On July 16, 2009, the EPA proposed revised rules for monitoring ambient ozone (74 FR 34525). The EPA proposed to modify minimum monitoring requirements in urban areas, add new minimum monitoring requirements in non-urban areas and extend the length of the required ozone monitoring season in some states. The schedule for finalizing any or all aspects of the ambient ozone monitoring proposal remains unclear at this time. There were no new monitoring requirements included in the 2008 ozone NAAQS rule.

The Photochemical Assessment Monitoring Station (PAMS) program, required by CAA section 182(c)(1), collects enhanced ambient air measurements in areas classified as Serious, Severe, or Extreme ozone nonattainment. Each PAMS area collects data for a target list of volatile organic compounds (VOCs), $NO_X$, $NO_y$, and ozone, as well as surface and upper air meteorological measurements. Monitoring rule amendments published on October 17, 2006, (71 FR 61236) reduced the minimum PAMS requirements. The revisions were intended to require the retention of the minimum common PAMS network elements necessary to meet the objectives of every PAMS program, while freeing up resources for states to tailor other features of their own PAMS networks to suit their specific data needs.

*L. How can states qualify for a 1-year attainment deadline extension?*

Section 181(a)(5) of the CAA addresses the conditions under which an area may be eligible for a 1-year extension of its attainment date. Because that statutory provision was written for an exceedance-based standard, such as the 1-hour ozone NAAQS, the EPA established through the Phase 1 Rule (40 CFR 51.907) an interpretation that would apply to a concentration-based standard, such as the 1997 ozone NAAQS.[61] The 2008 ozone NAAQS is also a concentration-based standard. Thus, we are proposing the same approach as set forth in section 51.907 for purposes of the 2008 ozone NAAQS. Under this approach, an area that fails to attain the 2008 ozone NAAQS by its attainment date would be eligible for the first 1-year extension if, for the attainment year, the area's 4th highest daily 8-hour average is at or below the level of the standard. The area would be eligible for the second 1-year extension if the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is at or below the level of the standard. Thus, to be eligible for the first 1-year extension, the 4th highest daily 8-hour value for an area would need to be at or below 0.075 ppm. The area would be eligible for the second extension if the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is less than or equal to 0.075 ppm.

*M. How will the EPA address transport of ozone and its precursors for rural nonattainment areas, multi-state nonattainment areas and international transport?*

1. Rural Transport Areas (RTAs)

Section 182(h) of the CAA recognizes that ozone standard violations in some rural areas may be almost entirely attributable to emissions from outside the nonattainment area (i.e., from upwind areas). That section provides that an area meeting certain criteria may, at the Administrator's discretion, be treated as a ''rural transport area.'' Under this classification, the area's ozone implementation requirements are met if the area satisfies the requirements applicable to areas classified as Marginal. This means that the area does not need to provide an attainment demonstration or adopt specific mandatory measures associated with higher classifications. The only requirements that would apply, regardless of the level of ozone air quality, would be nonattainment NSR, at the Marginal major source threshold and offset ratio, and conformity requirements associated with a nonattainment designation, as well as the emission inventory and source emission statement requirements. Because the area's nonattainment problem is primarily due to upwind sources outside the control of the area, the consequences of failure to attain by the Marginal area deadline would not apply.

The EPA may determine an area is a rural transport area if it meets two statutory criteria. First, a nonattainment area may only be a rural transport area if it ''. . . does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area . . .'' In addition, the EPA must determine that ''sources of VOC emissions (and, where the Administrator determines relevant, $NO_X$ emissions) within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.'' The metropolitan areas addressed in section 182(h) were only those with population cores of 50,000 or more.

In 2000, OMB issued new standards for defining statistical areas (65 FR 82228; December 27, 2000). The new

[61] The exceedance based standard basically allowed the NAAQS level to be exceeded an average of only once a year over a 3-year period. (This is a generalization of how attainment is determined; the actual method considers other factors such as completeness of the data.) *See* 40 CFR, appendix H. In contrast, the concentration based standard allows the level of the 8-hour ozone NAAQS to be ''exceeded'' more than once a year on average because the form (concentration-based) of that NAAQS is determined by averaging the 4th highest reading for each year over a 3-year period.

statistical area standards supersede and replace the previous 1990 standards for defining metropolitan areas, which the EPA used for the ozone designations and classifications for the 1-hour ozone NAAQS and the 1997 ozone NAAQS. In order to facilitate comparison of data for MSAs over time, OMB retained the conceptual approach to defining metropolitan statistical areas based around population cores of 50,000 or more. These core areas are not necessarily confined to city limits, and may include multiple counties or parts of counties. Because of the usefulness of the metropolitan area standards and data products, OMB received requests that the new standards take into account more territory of the United States. In response, OMB established a new category called micropolitan statistical areas, which are defined as areas with an urban core population of at least 10,000 but less than 50,000. The new standards also establish the term Core Based Statistical Area (CBSA), which refers collectively to both metropolitan statistical areas and the new smaller micropolitan statistical areas, and the term Combined Statistical Area (CSA), which consists of two or more adjacent CBSAs that are linked by commuting patterns. (*See http://www.census.gov/population/www/metroareas/metrodef.html.*)

In light of the changed OMB definitions, the EPA has considered how the reference in section 182(h) to areas adjacent to a ''Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area'' should be interpreted. We intend to interpret this language to refer to OMB's current definition of MSA. In other words, to qualify for a rural transport classification, the nonattainment area's boundary could not include or be adjacent to an OMB-defined MSA based on the Census Bureau's latest population estimates. Under this approach, any nonattainment area associated with a micropolitan area or area too sparsely populated to be included in a census-defined statistical area, based on Census Bureau population estimates, may be able to qualify for a rural transport classification.

The EPA believes this interpretation of CAA section 182(h) is consistent with the scope of section 182(h) as promulgated in 1990 and provides maximum flexibility for areas to qualify for this classification where appropriate. During the designations process for the 2008 ozone NAAQS, no states identified any rural transport areas.

2. Multi-State Nonattainment Areas

Each state within a multi-state ozone nonattainment area is responsible for meeting all the requirements relevant to the given area. Section 182(j)(1)(a) requires that states should ''take all reasonable steps to coordinate substantively and procedurally'' on SIP development. States should coordinate on topics such as determining the appropriate modeling domain, baseline year, projection years and meteorological episodes. In addition, they should coordinate modeling efforts and, as required by section 182(j)(1)(B), the attainment demonstration must be based on photochemical grid modeling or another method determined by the EPA to be at least as effective.

Section 182(j)(2) recognizes that in certain instances, one or more states within a multi-state nonattainment area may not submit an attainment plan by the required date, and thus interfering with the ability of the area as a whole to demonstrate attainment. In such case, section 182(j) provides that even though the area as a whole would not be able to demonstrate attainment, the sanction provisions of section 179 shall not apply in the portion of the nonattainment area located in a state that submitted all other provisions of an attainment plan and demonstrated that it could have demonstrated attainment but for the failure of the other state to cooperate.

3. International Transport

a. Transboundary Transport

Most ozone air quality problems in the United States are due primarily to emission sources within the United States. However, domestic ozone air quality can also be affected by sources of emissions located across United States borders in Canada and Mexico, and from other continents. These contributions to U.S. ozone concentrations from sources outside the United States can affect to varying degrees the ability of some areas to attain and maintain the 2008 ozone NAAQS and may play a larger role in ozone attainment demonstrations for future NAAQS.

There is strong evidence that baseline levels of tropospheric ozone have risen above pre-industrial levels in the northern hemisphere, and much of this increase can be directly attributed to human-caused emissions of ozone precursors. Our ability to fully characterize and quantify the impact of sources of air pollution from other parts of North America (Canada and Mexico) has been steadily improving; however, our ability to assess the impacts of air pollution from other continents on air quality in the U.S. is still developing. Some factors that affect our current ability to fully characterize international transboundary transport of air pollution from other continents are uncertainties in foreign emissions inventories, incomplete understanding of atmospheric chemistry during transport and the inability to distinguish long-range pollutant contributions from local and regional sources of air pollution.

In order to address the challenging and complex problem of the impact of foreign emissions on air quality in the U.S., the EPA has been engaged in a number of different efforts both domestically and internationally. In 1991, the U.S. and Canada entered into an agreement to address transboundary air pollution (U.S.-Canada Air Quality Agreement); and in 2000 an Ozone Annex was added to the agreement to establish commitments to reduce ozone and its precursors—$NO_X$ and VOCs. Under this agreement, significant progress has been made in reducing transport of ozone and its precursors across the U.S.-Canada border. Similarly, the U.S. has been working with Mexico in addressing the transboundary transport of air pollution under the La Paz Agreement (Cooperation for the Protection and Improvement of the Environment in the Border Area) established in 1983.

In addition, the EPA, along with several other federal agencies, sponsored a National Academy of Sciences study to summarize the state of knowledge regarding the international flows of air pollutants into and out of the U.S. and consider the impact of these flows on the achievement of environmental objectives related to air quality and pollutant deposition in the U.S.[62] The study, completed in 2009, recommended a variety of research initiatives, such as advanced ''fingerprinting'' techniques to better identify source-specific pollutant characteristics in order to enhance the understanding of long-range transport of pollution. Moreover, the EPA co-chairs the Task Force on Hemispheric Transport of Air Pollution under the Convention on Long-range Transboundary Air Pollution of the United Nations Economic Commission for Europe. The task force was established to develop a fuller understanding of intercontinental transport of air pollution in the northern hemisphere, and serves as a forum for international scientific communication

[62] ''Global Sources of Local Pollution: An Assessment of Long-Range Transport of Key Air Pollutants to and from the United States.'' *http://www.nap.edu/catalog.php?record_id=12743.*

and collaboration and as a bridge between the international research community and the international air quality policy community. This task force concluded that methane is an important precursor to tropospheric ozone on global scales and that decreasing methane emissions will, over several decades, decrease background ozone levels and help mitigate climate change.

Methane has not been addressed as part of ozone attainment planning in the past because of the limited effect that local measures to control methane would have on local or regional ozone concentrations in the immediate time frame. Given the temporal and spatial characteristics associated with methane and ozone, we continue to believe that it is inappropriate to require or rely on local methane emission reductions in ozone SIPs. Through voluntary partnership programs focused on greenhouse gas reduction, the EPA has worked with U.S. industries and state and local governments to promote cost-effective opportunities for reducing methane emissions from the coal, natural gas, petroleum, landfill and agricultural industries. Building on these domestic programs and the international Methane to Markets Partnership, the United States has joined with other countries to launch the Global Methane Initiative to facilitate the reduction of methane emissions globally. These domestic and international efforts will help mitigate climate change and decrease background ozone levels over the next several years and decades.

The EPA will continue to work with our domestic and international partners to better understand the extent and implications of transboundary flows of air pollutants and, where possible, to mitigate their impact on U.S. domestic air quality.

b. The SIP Approval Process Under Section 179B for International Border Areas

Emissions from sources outside the United States that may contribute to violations of the 2008 ozone NAAQS in an area designated as nonattainment may be addressed by section 179B of the CAA. This section allows the EPA to approve an attainment demonstration for a nonattainment area if: (1) The attainment demonstration meets all other applicable requirements of the CAA; and (2) the submitting state can satisfactorily demonstrate that ''but for emissions emanating from outside of the United States,'' the area would attain and maintain the ozone standard. The EPA is proposing that this could include consideration of any emissions from North American or intercontinental sources. The EPA has historically evaluated these ''but for'' demonstrations on a case-by-case basis, based on the individual circumstances, the classification of the area and the data provided by the submitting state. These data have included ambient air quality monitoring data, modeling scenarios, emissions inventory data and meteorological or satellite data. For areas classified as Moderate and above, the modeling and other elements of the attainment demonstration must show timely attainment of the NAAQS but for the emissions from outside of the U.S. Section 179B does not, however, provide authority to exclude monitoring data influenced by international transport from regulatory determinations related to attainment and nonattainment. Thus, even if the EPA approves a section 179B ''but for'' demonstration for an area, the area would continue to be designated as nonattainment and subject to the applicable requirements, including nonattainment new source review, conformity and other measures prescribed for nonattainment areas by the CAA. However, if the EPA approves a ''but for'' demonstration for an area, the area would not be subject to reclassification for failure to attain by its attainment deadline and, if such areas were classified as Severe or Extreme, the section 185 fee program would not apply based on a failure to attain by the attainment date.

Although monitored data cannot be excluded for a determination of whether an area has attained based solely on the fact the data are affected by emissions from outside the U.S., such data may be excluded from consideration if they were significantly influenced by exceptional events. CAA section 319(b)(3). Where international transport meets the criteria contained in the EPA's Exceptional Events Rule (40 CFR 50.14), it can be addressed by that rule.

The EPA believes that the best approach for addressing the potential impacts of international transport on nonattainment is for states to work with the EPA on a case-by-case basis to determine the most appropriate information and analytical methods for each area's unique situation. We will work with states that are developing plans pursuant to section 179B, and ensure the states have the benefit of the EPA's developing understanding of international transport of ozone and its precursors.

*N. How will the section 182(f) $NO_X$ provisions be handled?*

1. Background

Section 182(f) of the CAA applies to areas designated nonattainment for ozone and classified as Serious and above under subpart 2 of part D of title 1, and to areas in the OTR. It requires states to apply the same requirements to major stationary sources of $NO_X$ as apply to major stationary sources of VOC under subpart 2. Specifically, this requirement applies to RACT and nonattainment NSR for major stationary sources of $NO_X$ in these areas.[63] However, while $NO_X$ emissions are necessary for the formation of ozone in the lower atmosphere, a local decrease in $NO_X$ emissions can, in some cases, increase local ozone concentrations. Thus, section 182(f) also allows a person or a state to request an exemption from or limitation on the application of the specified $NO_X$ requirements if specific circumstances are met (''$NO_X$ exemption''). Areas granted a $NO_X$ exemption under section 182(f) may also be granted an exemption from certain requirements of the EPA's motor vehicle I/M regulations and from certain federal requirements of General and Transportation Conformity.[64] The EPA initially issued guidance on the section 182(f) $NO_X$ requirements in 1993.[65] On January 14, 2005, the EPA issued an update to that guidance to address implementation of the 1997 ozone NAAQS.[66]

[63] *See* 57 FR 55622, November 25, 1992, ''Nitrogen Oxides Supplement to the General Preamble.''

[64] As stated in the EPA's I/M rule (57 FR 52950; November 5, 1992) and conformity rules (60 FR 57179, November 14, 1995 for transportation conformity and 58 FR 63214, November 30, 1993 for general conformity), certain $NO_X$ requirements in those rules do not apply where the EPA grants an area-wide exemption under section 182(f).

[65] In 1993 the EPA issued a guidance document for application of the section 182(f) provisions with respect to the 1-hour ozone NAAQS. The document was titled ''Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f), from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Division Directors, December 16, 1993. The $NO_X$ exemption guidance was revised later in ''Section 182(f) Nitrogen Oxides ($NO_X$) Exemptions Revised Process and Criteria,'' memorandum from John S. Seitz, Director, Office of Air Quality and Standards, to the Regional Division directors, May 27, 1994; and ''Section 182(f) Nitrogen Oxides ($NO_X$) Exemptions—Revised Process and Criteria,'' memorandum from John S. Seitz, Director, Office of Air Quality and Standards, to the Regional Division Directors, February 8, 1995.

[66] Memorandum dated January 14, 2005, ''Guidance on Limiting Nitrogen Oxides ($NO_X$) Requirements Related to 8-Hour Ozone Implementation'' from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Air Directors, Regions I–X.

2. Proposal

We are not proposing any modifications to our previous interpretation of the $NO_X$ RACT requirement for purposes of implementing the 2008 ozone NAAQS. Consistent with the approach taken in the 2005 updated guidance and the Phase 2 Rule, we are proposing that a previously granted $NO_X$ exemption (or waiver) under the 1-hour or 1997 ozone NAAQS would not apply for purposes of implementing the 2008 ozone NAAQS. A state would need to submit a new request for an exemption that is supported by analyses specific to the 2008 ozone NAAQS and considers any relevant information developed after the 1-hour or 1997 ozone NAAQS waivers were granted. As states evaluate whether to seek a $NO_X$ waiver, the EPA encourages them to include consideration of air quality effects that may extend beyond the designated nonattainment area. *See,* for example, the discussion in the Phase 2 Rule, November 29, 2005, on page 71661 (70 FR at 71661–71662).

A SIP revision requesting a $NO_X$ exemption for the 2008 ozone NAAQS must contain adequate documentation that the provisions of section 182(f) and our regulations are met. The EPA has issued guidance on appropriate documentation regarding section 182(f) for application to the 8-hour ozone program.[67] The EPA believes this guidance is sufficient to cover the 2008 ozone NAAQS.

*O. Emissions Reduction Benefits of Energy Efficiency/Renewable Energy Policies and Programs, Land Use Planning and Travel Efficiency*

1. Energy Efficiency/Renewable Energy Policies and Programs

Governments at all levels—local, state, tribal and federal—have been developing energy efficiency/renewable energy (EE/RE) policies and programs to reduce demand for and production of fossil-fuel driven electric power. As of 2011, twenty-nine states (and Washington, DC) had adopted renewable portfolio standards (RPS) which require retail electricity providers to supply a minimum percentage or amount of retail demand with renewable resources, more than double the number of states in 2000.[68] [69] Although the details of each RPS policy vary, generally they are structured such that, initially, a relatively small percentage of a state's electricity supply must come from renewable sources, and over time the percentage increases until a state-specified target is achieved. For example, the State of Connecticut requires that 4.5 percent of electricity come from renewable sources beginning in 2005, and the target increases to 27 percent by 2020.[70]

Energy efficiency policies refer to a range of laws, regulations, and public utility commission (PUC) orders aimed at reducing energy demand through the use of more energy efficient equipment, technologies, and practices. These policies can be funded through ratepayer surcharges, federal funds (e.g., American Recovery and Reinvestment Act [71]), state general funds, proceeds from pollution auctions such as the Regional Greenhouse Gas Initiative [72] and/or any combination of the above. Examples of energy efficiency policies include:

- Minimum efficiency requirements for new homes and buildings (building energy codes) or appliances (appliance standards).
- Requirements for utilities (or other program administrators) to deliver a specified amount of energy savings by developing energy efficiency programs to increase market adoption of energy efficiency technologies and practices (i.e., energy efficiency resource standards (EERS), also known as Energy Efficiency Portfolio Standards (EEPS)). Some states have incorporated EERS to function alongside or as part of their RPS.
- Specified funding levels collected via ratepayer electric bills or other sources and dedicated to implementing energy efficiency programs (e.g., public benefits funds, air pollution allowance auction revenue).

EE/RE policies and programs can help reduce electricity generation from fossil-fueled sources resulting in lower emissions of $NO_X$ (as well as other criteria pollutants, hazardous air pollutants and greenhouse gases) from power generation. Many renewable energy sources such as wind, solar and hydro power have no associated $NO_X$ and other emissions. Other renewable energy sources, such as landfill gas combustion used to power electrical generators, do produce some air emissions but generally less $NO_X$ emissions than coal-fired EGUs. Energy efficiency is achieving the same or better level of service or performance with lower energy consumption. Examples include high-efficiency appliances; efficient lighting; high-efficiency heating, ventilating and air conditioning systems or control modifications; efficient building design; advanced electric motor drives; combined heat and power; and heat recovery systems.

The EPA encourages states to consider adopting EE/RE policies and programs to benefit nonattainment areas in their own state, as well as to reduce the impact of ozone transport on downwind states. In July 2012, the EPA made available the first version of clarifying guidance on the incorporation of EE/RE measures in SIPs.[73] Specifically, the EPA made available a document titled, ''Roadmap for Incorporating Energy Efficiency/Renewable Energy Policies and Programs into State and Tribal Implementation Plans'' to encourage state, tribal and local agencies to consider incorporating EE/RE policies and programs into SIPs/tribal implementation plans (TIPs). The manual is a ''living'' document, and it will be updated periodically as new information becomes available.

The manual describes four pathways for considering air pollution reductions from EE/RE policies and programs in SIPs and TIPs. They can be included in the attainment year projected baseline, factored into a ''weight of evidence'' attainment demonstration, incorporated as emerging/voluntary measures, or adopted as control measures and modeled in the attainment demonstration. When reviewing air pollution reductions from EE/RE policies and programs for the purpose of SIPs and TIPs, it is important to consider how the EE/RE policies and programs and their associated emission reductions best fit within one or more of the four SIP pathways. Valid EE/RE policies and programs that meet the applicable requirements of section 182(c)(9) can also be used as contingency measures.

The EPA is providing additional assistance to state, tribal and local agencies, including tools for quantifying the emissions impacts of EE/RE policies and programs, training and technical assistance, and energy savings information for state-level EE policies

[67] Memorandum dated January 14, 2005, ''Guidance on Limiting Nitrogen Oxides ($NO_X$) Requirements Related to 8-Hour Ozone Implementation'' from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Air Directors, Regions I–X.

[68] For more information, *see* presentations from the 2011 National Summit on RPS at *http://www.cleanenergystates.org/assets/Uploads/2011-RPS-Summit-Combined-Presentations-File.pdf.*

[69] *See* Database of CHP Policies and Incentives (dCHPP) at *http://www.epa.gov/chp/policies/database.html.*

[70] *http://www.dpuc.state.ct.us/electric.nsf/$FormRenewableEnergyView?OpenForm&.*

[71] For more information, go to: *http://www.recovery.gov/Pages/default.aspx.*

[72] For more information, go to: *http://www.rggi.org/.*

[73] *See http://www.epa.gov/airquality/eere.html.*

and programs. The EPA is also working with states on developing examples to illustrate how reductions from specific EE/RE policies and programs could be quantified and considered in their SIPs. The EPA encourages states to continue to work with each other and with the EPA to incorporate emission reductions from their EE/RE policies and programs into SIPs.

2. Land Use Planning

States may also wish to consider strategies that foster more efficient urban and regional development patterns as another effective long-term air pollution control measure. For example, land use strategies consistent with the principles endorsed by the HUD DOT EPA Sustainable Communities Partnership [74] can reduce mobile source emissions by providing a broader range of transportation and housing choices. Strategies that achieve such results include: increased residential development in major employment centers, transit-oriented development, redevelopment of underutilized land in existing communities and making pedestrian and transit access key design features of new communities. Specific activities that support such strategies include: changing local zoning codes to accommodate mixed use development and more walkable neighborhoods; greenway corridors; complete streets ordinances; increasing street connectivity; creating more flexible parking standards; transit station area planning; and funding or policy incentives to support redevelopment. EPA studies have concluded that development patterns that enable people to live closer to work, and that allow people to walk, bike or use transit, will reduce VMT, thereby decreasing automobile emissions and improving regional air quality.[75] Several studies conducted by metropolitan planning organizations have also found significant reductions in VMT associated with accommodating more growth though redevelopment in existing communities rather than greenfields development.

The EPA has issued guidance on how to include emissions reductions from such growth strategies in SIPs. This guidance document, ''Improving Air Quality Through Land Use Activities,'' is available at: *http://www.epa.gov/otaq/stateresources/policy/transp/landuse/r01001.pdf.*

The guidance provides communities experiencing air quality problems with the information they need to better understand the link between air quality, transportation and land use activities, and how certain land use activities have the potential to help local areas meet and maintain healthy air quality. The document also includes methods to help communities account for the air quality benefits of their local land use activities in their air quality plans. The EPA will provide additional guidance as needed, and will continue to work with states on incorporating these types of programs into their SIPs.

3. Travel Efficiency

In addition to land use strategies, areas should consider incorporating travel efficiency strategies in their SIPs. Travel efficiency strategies may include land use strategies, but also include new or expanded mass transit options, commuter strategies, system operations (e.g., eco-driving, ramp metering), pricing (e.g., parking taxes, congestion pricing, intercity tolls), speed limit restrictions and multimodal freight strategies.

In July 2009, the Urban Land Institute released a report titled, *Moving Cooler: An Analysis of Transportation Strategies for Reducing Greenhouse Gas Emissions,*[76] which the EPA and the DOT helped to fund. The report analyzed the potential levels of emissions reductions achievable from light-duty travel efficiency strategies. *Moving Cooler* included six different bundles of strategies to reflect different potential groups of strategies that could be implemented.

We believe that the ''Low Cost'' bundle of measures represents the most appropriate combination of strategies for states to consider based on cost, likelihood of success and accuracy of the research results. This bundle of measures includes the strategies listed above. We have conducted a preliminary national emissions modeling analysis using the data in the report and estimate that between 2010 and 2020 the low cost bundle of measures could reduce $NO_X$ and VOC emissions between approximately 2 and 5 percent depending on how aggressively the strategies are implemented. Additional reductions are possible in later years.

The *Moving Cooler* report makes assumptions about the geographic scope for which each strategy could be implemented. For example, certain strategies like increased transit are dependent on high population density, while other strategies like telecommuting could be implemented in both urban and rural areas. The percent reductions for such measures would be larger in urban areas, where VMT reductions would be concentrated. The EPA believes that states should consider these types of strategies as they develop SIPs for the 2008 ozone NAAQS.

In March of 2011, the EPA released two documents that we believe will prove to be useful to states that want to evaluate emissions reductions that may be available from travel efficiency strategies. The first document is titled, ''Potential Changes in Emissions Due To Improvements In Travel Efficiency.'' [77] This report provides information on the effectiveness of travel efficiency measures for reducing emissions of $NO_X$, VOCs and $PM_{2.5}$ at the national scale. The report describes an approach that uses regionally derived travel model data and other travel activity information, and sketch-planning analysis to estimate potential emission reductions from urban areas of varying size and characteristics. The results are applied to other urban areas in the U.S. of similar characteristic to estimate potential national emission reductions.

The second document is titled, ''Transportation Control Measures: An Information Document for Developing and Implementing Emission Reduction Programs.'' [78] This document provides information on transportation control measures that have been implemented across the country for a variety of purposes, including reducing emissions related to criteria pollutants. The document describes the processes used to develop and implement the strategies and, where available, their effectiveness.

*P. Efforts To Encourage a Multi-Pollutant Approach When Developing 2008 Ozone SIPs*

1. In General

From a planning and resource perspective, the EPA believes that it can

[74] Sustainable Communities Principles: 1. Provide more transportation choices. 2. Promote equitable, affordable housing. 3. Enhance economic competitiveness. 4. Support existing communities. 5. Coordinate and leverage federal policies and investments. 6. Value communities and neighborhoods. *See http://www.epa.gov/smartgrowth/partnership/index.html.*

[75] ''Our Built and Natural Environments'' (EPA 231–R–01–002, January 2001). ''Measuring the Air Quality and Transportation Impacts of Infill Development'' (EPA 231–R–07–001, November 2007).

[76] Cambridge Systematics, Inc. (2009). Moving Cooler: An Analysis of Transportation Strategies for Reducing Greenhouse Gas Emissions. Urban Land Institute: Washington, DC (*http://www.uli.org/*).

[77] EPA–420–R–11–003, March 2011, *http://epa.gov/otaq/stateresources/policy/420r11003.pdf.*

[78] EPA–430–R–09–040, March 2011, *http://www.epa.gov/otaq/stateresources/policy/430r09040.pdf.*

be efficient for states to develop integrated control strategies that addresses multiple pollutants rather than separate strategies for each pollutant or NAAQS individually. An integrated air quality control strategy that reduces multiple pollutants can help ensure that reductions are efficiently achieved and produce the greatest overall air quality benefits. For example, we know that certain control measures that reduce emissions of the ozone precursors $NO_X$ and VOC, and thus reduce ambient ozone levels, can also result in reduced emissions and ambient concentrations of $PM_{2.5}$ [79] and also can improve visibility. Many VOCs are also HAP, so an ozone control strategy may provide the additional benefit of reducing air toxics. We also know that many sources of $PM_{2.5}$ also emit toxic metals as particulates, so controlling directly emitted $PM_{2.5}$ emissions from these sources would also reduce the emissions of toxic metals. In addition, due to expected changes in meteorology resulting from climate change, the EPA encourages states to assess climate change and air pollution together and account for the potential effects of climate change in their multi-pollutant planning efforts.

In June 2007, the EPA's CAA Advisory Committee (CAAAC) recommended that the agency allow states to integrate SIP requirements and other air quality goals into a comprehensive plan.[80] The recommended plan would demonstrate attainment/maintenance of multiple NAAQS, accomplish sector-based reductions, realize risk reductions of HAPs and make improvements in visibility. It could also be structured to integrate programs addressing land use, transportation, energy and climate.

The EPA has encouraged states to take a multi-pollutant approach to managing air quality.[81] Specifically, we have encouraged states to involve all stakeholders when planning to meet air quality standards and to provide a basic outline for how local jurisdiction(s) could address air pollutants in an integrated manner.

While the agency encourages states to develop multi-pollutant plans, we recognize that the requirement for the EPA to review and, as necessary, revise NAAQS every 5 years, which can trigger new statutory SIP submission and attainment dates, as well as the ever-evolving understanding of pollutants and the myriad control programs that may be available to reduce emissions, can sometimes make such efforts challenging. For example, under the current law, the 2007 submission date for Regional Haze SIPs has already passed while the December 2012 submittal date for attainment demonstrations for the 2006 $PM_{2.5}$ NAAQS is more than 2 years before the proposed submittal date for attainment demonstrations for the 2008 ozone NAAQS. Although it is thus not feasible to integrate fully the planning requirements for regional haze, the 2006 $PM_{2.5}$ NAAQS and the 2008 ozone NAAQS, states could use common databases and modeling tools for all three programs and rely on similar control measures as appropriate. Furthermore, as states develop plans to meet the 2008 ozone NAAQS, they may wish to modify existing plans for other NAAQS or for regional haze as they consider strategies more comprehensively. However, it is important to note that all the CAA mandated planning and program elements for individual standards must continue to be met. We are specifically requesting comments on other approaches to integrating the planning requirements for multiple NAAQS and other CAA programs that are promulgated at different times.

2. What is the EPA doing beyond encouraging states to integrate their air quality planning activities to the extent feasible?

Ideally, an air quality management plan (AQMP) is a set of pollution reduction strategies/planning activities for an area demonstrating: attainment/maintenance of one or more NAAQS; risk reductions from HAPs; improvements in visibility and ecosystem health; and integration of land use, transportation, energy and climate activities in the area. Three areas in the country—North Carolina, New York and the city of St. Louis (involving both Missouri and Illinois)—participated in an EPA-led pilot effort to develop multi-pollutant AQMPs. The pilots provided lessons regarding AQMP development that should prove useful to other areas interested in better integrating their air quality planning. The areas' initial AQMPs and other materials are available on the EPA's Web site.[82]

Implementation of the 2008 ozone NAAQS provides an opportunity for states to consider how to use a multi-pollutant approach from the beginning of their planning process. We recommend that states and tribes wishing to take a comprehensive approach consider the following activities.

- Develop models for the attainment demonstration that include previously implemented or planned measures to reduce ozone precursors, secondary fine particles, pollutants that contribute to regional haze and, where appropriate, air toxics and any potential negative impacts on ecosystems.
- Conduct an integrated assessment of the impact controls have on ambient levels of ozone, $PM_{2.5}$, regional haze and, where applicable, air toxics, greenhouse gases, ecosystem protection and environmental justice.
- Use common data bases and analytical tools, where possible.

EPA is requesting comment on what incentives or assistance we might be able to provide to encourage states to integrate their planning activities.

3. Multi-pollutant Assessments/One-atmosphere Modeling

A multi-pollutant assessment, or one-atmosphere modeling, is conducted with a single air quality model that is capable of simulating transport and formation of multiple pollutants simultaneously.[83] For example, this type of model can simulate formation and deposition involving pollutants associated with ozone, $PM_{2.5}$ and regional haze, and it can include algorithms simulating gas phase chemistry, aqueous phase chemistry, aerosol formation and acid deposition. This type of model could also include the formation and deposition of key air toxics and the chemical interactions that occur with these individual toxic species to produce ozone and $PM_{2.5}$.

Multi-pollutant assessments are recommended for ozone attainment demonstrations because the formation and transport of ozone is closely related to the formation of both $PM_{2.5}$ and regional haze. There is often a positive correlation between measured ozone and secondary particulate matter. Many of the same factors affecting concentrations of ozone also affect concentrations of secondary particulate matter because similarities exist in

[79] For a list of potential control measures for $PM_{2.5}$ precursors, *see http://www.epa.gov/airquality/particlepollution/measures/pm_control_measures_tables_ver1.pdf.*

[80] Recommendations to the Clean Air Act Advisory Committee: Phase II, June 2007, *http://epa.gov/air/caaac/aqm/phase2finalrept2007.pdf.*

[81] Memo from Stephen D. Page to Regional Air Division Directors, Aug. 10, 2005, ''Consideration of Multiple Pollutants in Control Strategy Development.'' *http://epa.gov/air/caaac/aqm/aqm-page-memo.pdf.*

[82] *http://www.epa.gov/air/aqmp/.*

[83] Depending on the context, ''multi-pollutant'' can be defined in different ways. In this context we are defining multi-pollutant modeling as simultaneous modeling of ozone, $PM_{2.5}$, key air toxics, and regional haze. Future multi-pollutant models may include the ability to model a broader array of air toxics as well as greenhouse gases.

sources of precursors for both pollutants. For example, emissions of $NO_X$ may lead to formation of nitrates, which affect both ambient ozone and $PM_{2.5}$ levels and impair visibility. Many VOCs (such as toluene) are air toxics and may also be sources or precursors for both ozone and organic particles. In addition, the presence of ozone itself may be an important factor affecting secondary particle formation.

Because of these relationships, models and data analysis intended to address ozone could be beneficial for use in addressing $PM_{2.5}$ and visibility impairment. When performing a multi-pollutant assessment, the modeling should take into account previously implemented or planned measures to reduce ozone, $PM_{2.5}$ and regional haze. States that undertake multi-pollutant assessments as part of their attainment demonstration should consider assessing the impact of their ozone strategies on $PM_{2.5}$ and visibility impairment to ensure that optimal emission reduction strategies are developed for the three programs to the extent possible. This could facilitate addressing all of these pollutants in a more cost effective manner.

States may also find it desirable to assess the impact of ozone, $PM_{2.5}$ and/or regional haze control strategies on toxic air pollutants regulated under the CAA or under state air toxic initiatives. Given the relationships that exist between air toxics and the formation of ozone and $PM_{2.5}$, states may find that controls can be selected to meet goals for ozone and/or $PM_{2.5}$ attainment as well as those of specific air toxic programs.

*Q. How does this proposed rule apply to tribes?*

Section 301(d) of the CAA authorizes the EPA to approve eligible Indian tribes to implement provisions of the CAA on Indian reservations and other areas within the tribes' jurisdiction. The Tribal Authority Rule (TAR) (40 CFR part 49), which implements section 301(d) of the CAA, sets forth the criteria and process for tribes to apply to the EPA for eligibility to administer CAA programs. Among the programs that tribes may seek to administer are Tribal Implementation Plans (TIP),[84] which are submitted to the EPA for approval. However, unlike states, tribes are not required to develop implementation plans.[85] Under the TAR, the EPA determined that tribes are not required to meet plan submittal and implementation deadlines in the CAA, e.g., the deadlines specified in CAA sections 110(a)(1), 172(a)(2), 182, 187 and 191.[86]

Where tribes do seek to develop and administer TIPs, the TAR provides flexibility for tribes in the preparation of a TIP to address the NAAQS. See, e.g., 40 CFR 49.7(c). The TAR also states that the EPA has authority to promulgate federal implementation plan (FIP) provisions, as necessary and appropriate, to protect air quality if tribes choose not to implement those provisions. The EPA may find it necessary and appropriate to develop a FIP to reduce emissions from sources in Indian country where the tribe has not developed a TIP to address an air quality problem.

It is important for states and tribes to work together to coordinate planning efforts where nonattainment areas include both Indian country and state land. Coordinated planning in these areas will help ensure that the planning decisions made by the states and tribes complement each other and that the nonattainment area makes reasonable progress toward attainment and ultimately attains the 2008 ozone NAAQS. In reviewing and approving individual TIPs and SIPs, we will determine if together they are consistent with the overall air quality needs of an area.

States have an obligation to notify other states in advance of any public hearing(s) on their state plans if such plans will significantly impact such other states. 40 CFR 51.102(d)(5). Under section 301(d) of the CAA and the TAR, tribes may become eligible to be treated in a manner similar to states (TAS) for this purpose. Affected tribes with this status must also be informed of the contents of such state plans and given access to the documentation supporting these plans. In addition to this mandated process, we encourage states to extend the same notice to all affected tribes, regardless of their TAS status.

Executive Orders and the EPA's Indian policies generally call for the EPA to coordinate and consult with tribes on matters that affect tribes. Executive Order 13175, titled, ''Consultation and Coordination with Indian Tribal Governments'' requires the EPA to develop a process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications.'' In addition, the EPA's policies include the agency's 1984 Indian Policy relating to Indian tribes and implementation of federal environmental programs, the April 10, 2009, Office of Air Quality Planning and Standards guidance ''Consulting with Indian Tribal Governments,'' and the ''EPA Policy on Consultation and Coordination With Indian Tribes.'' [87]

Consistent with these policies, the EPA intends to meet with tribes on activities potentially affecting the attainment and maintenance of the 2008 ozone NAAQS in Indian country, including our actions on SIPs. As such, it would be helpful for states to work with tribes with land that is part of the same air quality area during the SIP development process and to coordinate with tribes as they develop their SIPs.

*R. What are the requirements for the Ozone Transport Region (OTR)?*

The Phase 2 Rule codified the requirements applicable to the OTR for the 1997 ozone NAAQS in 40 CFR 51.916. The EPA is proposing to adopt the same requirements for the 2008 ozone NAAQS, except that the submission date for OTR RACT SIPs would be the same as proposed under the RACT section of this preamble for nonattainment areas. That is, we are proposing to require that states submit the RACT SIPs required under section 182(b)(2) within the final timeline we adopt based on the two SIP submittal options detailed in section III.A of today's proposal. (See section III.D of this preamble for additional information on RACT timeframes.)

*S. Are there any additional requirements related to compliance and enforcement?*

The EPA is not proposing any specific regulatory provisions related to compliance and enforcement. Section 172(c)(6) requires nonattainment SIPs to ''include enforceable emission limitations, and such other control measures, means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment . . .'' The EPA's current guidance, ''Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans (EPA–452/R–93–005, June 1993)'' is still relevant to rules adopted for SIPs under the 2008 ozone NAAQS and should be consulted for purposes of developing appropriate enforceable nonattainment plan provisions under section 172(c)(6).

[84] Not to be confused with Transportation Improvement Programs (also abbreviated ''TIPs''); the context will determine the meaning.

[85] 70 FR 71666 (November 29, 2005).

[86] *See* 40 CFR 49.4(a).

[87] For a copy of this 2011 policy, *see http://www.epa.gov/tribal/pdf/cons-and-coord-with-indian-tribes-policy.pdf.*

*T. What are the requirements for addressing emergency episodes?*

The EPA proposes that the existing requirements for emergency episodes (40 CFR part 51, subpart H) would also apply to the 2008 ozone NAAQS. Subpart H requires SIPs to identify areas by priority classification and to contain contingency plans to prevent pollutant concentrations from reaching levels that would cause significant harm to the health of persons. The significant harm level for ozone had been established as 0.6 ppm, 2-hour average (40 CFR 51.151). This level remains appropriate for the 2008 ozone NAAQS.

*U. How does the ''Clean Data Policy'' apply to the 2008 ozone NAAQS?*

The EPA, in its Phase 1 Rule, codified its long-standing interpretation under the Clean Data Policy in a regulation. Under 40 CFR 51.918, a determination of attainment suspends the obligation to submit attainment planning SIP elements for the 1997 ozone NAAQS. An EPA determination that the area attained the 1997 ozone NAAQS suspended the obligation to submit any attainment-related SIP elements not yet approved in the SIP, for so long as the area continued in attainment.

The EPA in this rulemaking is proposing to apply this same approach with respect to determinations of attainment for the 2008 ozone NAAQS. Moreover, in order to reflect the intended ongoing status of the Clean Data Policy and to consolidate in one regulation a comprehensive provision applicable to determinations of attainment for the current and former ozone NAAQS, the EPA proposes, after revocation of the 1997 ozone NAAQS, to replace 40 CFR 51.918 with proposed 40 CFR 51.1118. Section 51.1118 applies essentially the same language as 51.918. If finalized, 40 CFR 51.1118 will apply to a determination of attainment that is made with respect to any revoked or current ozone NAAQS—the 1-hour, the 1997 or the 2008 ozone NAAQS. The new section 51.1118, like section 51.918, will set forth the regulatory consequences of an EPA determination, made after notice-and-comment rulemaking, that an area designated nonattainment for an ozone standard has air quality attaining that standard. Upon such a determination by the EPA, the requirements for the area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress plans, contingency measures and other attainment-related SIP elements for that NAAQS, shall be suspended until such time as the area is redesignated to attainment, at which time the requirements no longer apply, or until the EPA determines that the area has again violated that ozone NAAQS, in which case the requirements are again applicable. The EPA intends to apply the provision for the 2008 ozone NAAQS in a similar manner as it did for the 1997 ozone NAAQS. Because the proposed section 51.1118 merely incorporates the continuation of the EPA's long-held interpretation (Clean Data Policy) for the 1-hour ozone NAAQS, which was embodied in regulation 51.918 for the 1997 ozone NAAQS, it is appropriate to apply it in the context of the 2008 ozone NAAQS as well as the 1997 and 1-hour ozone NAAQS. On July 10, 2009, the U.S. Court of Appeals for the District of Columbia upheld the section 51.918 regulatory provision. (*NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009))

*V. What assistance programs is the EPA considering for implementation of the 2008 ozone NAAQS?*

For purposes of the 1997 ozone NAAQS, the EPA established the Early Action Compact (EAC) program. Under the EAC program, certain areas that were violating the 1997 ozone NAAQS at the time of designation were allowed to enter into an EAC agreement, and were given a deferred effective date for their area designation in order to allow time for the area to meet the terms of the agreement. The EPA does not have plans to proceed with an EAC program for the 2008 ozone NAAQS.

Nevertheless, the EPA believes there are significant advantages for states, tribes and local agencies to take steps to reduce emissions as early as possible. First and foremost, early reductions help to achieve cleaner air sooner, and help to ensure continued health protection. Secondly, early steps could help an area avoid a nonattainment designation in the first place, or for an area eventually designated as nonattainment, early reductions could result in a lower nonattainment classification. In addition, early action to improve air quality can help an eventual nonattainment area, particularly an area that has never been designated nonattainment before, establish working relationships between key stakeholders. Our expectation is that early actions to reduce emissions in such areas would be less resource-intensive than actions taken once a nonattainment designation has been made, since at that point the implementation of controls would need to occur in conjunction with actions to comply with other requirements such as nonattainment NSR and transportation conformity.

If an area uses 2011 as the baseline year for its RFP plan, as we are proposing as the default approach in this rule, any reductions that were made before 2011 can be fully reflected in the baseline for the area's attainment plan. Reductions achieved after 2011 due to measures in the area's SIP may receive emission reduction credit, subject to CAA requirements.

Under the 8-Hour Ozone Flex program for the 1997 ozone NAAQS (begun in 2006), the EPA worked with interested attainment areas to take proactive steps that would keep them in attainment.[88] The EPA is now offering a new early emission reduction program to attainment areas called ''Ozone Advance,'' which is similar to the Ozone Flex program.[89] The EPA initiated the Ozone Advance program in April 2012. Additional information on the Ozone Advance program for the 2008 ozone NAAQS is provided in a separate guidance document that is available at *www.epa.gov/ozonepmadvance.*

*W. What is the deadline for states to submit SIP revisions to address the CAA section 185 penalty fee provision for Severe and Extreme areas?*

Under section 185, major stationary sources of VOC and $NO_X$ in a Severe or Extreme ozone nonattainment area are subject to penalty fees for emissions in excess of 80 percent of the source's baseline amount of emissions if such an area fails to attain the NAAQS by its attainment date. The baseline amount for a source is based on its applicable emission limit(s) or actual emissions in the attainment year, whichever is lower.

Section 182(d)(3) provides that by December 31, 2000, the state shall submit a plan revision which includes the provisions required under section 185 for the 1-hour ozone NAAQS. Thus, the CAA provided slightly more than 10 years for submission of the fee program SIP revision for areas designated as

[88] *See http://www.epa.gov/ttn/oarpg/t1/memoranda/o3flexguidelines.pdf.*

[89] Areas that signed up for Ozone Advance prior to designations for the 2008 ozone NAAQS are able to continue to participate in the program even if they were subsequently designated nonattainment and classified as Marginal. These areas may continue to participate in the program until such time as they may be reclassified to a higher classification. Participation in the Ozone Advance program does not remove any nonattainment area requirements from these areas. The current Marginal areas in the Ozone Advance program are Baton Rouge, LA; DeSoto County, MS (part of Memphis, TN–AR–MS); and Upper Green River Basin, WY. The Uinta Basin, UT area, which was designated ''Unclassifiable,'' is also taking part in the program.

nonattainment and classified as Severe or Extreme by operation of law in 1990 for the 1-hour ozone NAAQS. We are proposing that states with areas initially classified as Severe or Extreme for the 2008 ozone NAAQS would be required to submit a section 185 SIP no later than 10 years after the effective date of designation and classification for the 2008 ozone NAAQS. For areas that are reclassified to Severe or Extreme at any other time, the EPA will establish an appropriate fee program SIP submission deadline as part of the reclassification action.

## IV. What is the EPA proposing to address anti-backsliding issues related to transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS?

### *A. General Background*

This section sets forth background for today's proposal regarding areas that will be subject to anti-backsliding requirements for the 1-hour ozone NAAQS and/or the 1997 ozone NAAQS, and the requirements that will apply to these areas after revocation of the 1997 ozone NAAQS. ''Anti-backsliding'' provisions are designed to ensure that for existing ozone nonattainment areas that are designated nonattainment for the revised and more stringent ozone NAAQS, (1) there is protection against degradation of air quality (e.g., the areas do not ''backslide''), (2) the areas continue to make progress toward attainment of the new, more stringent NAAQS, and (3) there is consistency with the ozone NAAQS implementation framework outlined in subpart 2 of Part D of the CAA.

The CAA contains several provisions indicating Congressional intent not to allow a state to alter or remove provisions from an approved implementation plan if the revision would reduce air quality protection. Section 193 of the CAA prohibits modification of a control requirement in effect or required to be adopted as of November 15, 1990 (the date of enactment of the 1990 CAA Amendments), unless such a modification would ensure equivalent or greater emissions reductions. CAA section 172(e), which addresses relaxations of a NAAQS, requires protections for areas that have not attained a NAAQS prior to a relaxation, by requiring controls which are at least as stringent as the controls applicable in nonattainment areas prior to any such relaxation. Section 110(l) provides that a SIP revision cannot be approved if it will interfere with attainment or other CAA requirements. Under section 175A(d), an area that is redesignated to attainment [90] may, with an appropriate showing, cease to implement a measure that is contained in the SIP at the time of redesignation, but only if that measure is retained as a contingency measure in the area's maintenance plan.[91]

### *B. Background on Transition From the 1-Hour to the 1997 Ozone NAAQS*

The following discussion addresses the transition policies the EPA adopted in the 2004 Phase 1 Rule for implementation of the 1997 ozone NAAQS; the legal challenges to that rule; and the resulting court decision in *South Coast,* which directed the EPA to provide 1-hour ozone NAAQS anti-backsliding requirements for nonattainment NSR, section 185 fees and section 172(c)(9) and 182(c)(9) contingency measures for failure to attain the 1-hour ozone NAAQS by the applicable attainment date or to make reasonable further progress toward attainment of that standard.

In its Phase 1 Rule, the EPA stated that the 1-hour ozone NAAQS would be revoked (i.e., no longer apply) 1 year after the effective date of initial area designations for the 1997 ozone NAAQS.[92] The EPA also included anti-backsliding requirements in the Phase 1 Rule to address the transition between the two standards.

In developing the Phase 1 Rule, the EPA recognized that Congress did not directly address how anti-backsliding requirements should apply where the EPA replaces a prior NAAQS with a more stringent NAAQS, as occurred when the EPA replaced the 1-hour ozone NAAQS with the 1997 ozone NAAQS.[93] However, in section 172(e), Congress did address anti-backsliding requirements for when the EPA replaces a NAAQS with a less stringent NAAQS. In the absence of any express Congressional direction regarding anti-backsliding where a NAAQS is replaced with a more stringent NAAQS, the EPA concluded that it was reasonable to look to the principles set forth in section 172(e) for purposes of the transition from the 1-hour ozone NAAQS to the 1997 ozone NAAQS.

The Phase 1 Rule codified anti-backsliding provisions governing the transition from the revoked 1-hour ozone NAAQS to the 1997 ozone NAAQS in 40 CFR 51.905(a). These provisions, as promulgated, retained certain nonattainment area requirements specified under section 182 of the CAA, as those requirements applied for the 1-hour ozone NAAQS. The retained requirements, which were defined as ''applicable requirements'' in the ozone implementation regulations,[94] continued to apply to areas that were designated nonattainment for the 1-hour ozone NAAQS as of the date that NAAQS was revoked, and that were also designated nonattainment for the 1997 ozone NAAQS as of that same date. The 1-hour ozone NAAQS requirements that the EPA retained as applicable requirements were the following: (1) RACT; (2) I/M programs; (3) Major source applicability cut-offs for purposes of RACT; (4) Rate of progress (ROP) reductions; (5) Stage II vapor recovery; (6) the Clean fuels fleet program under section 183(c)(4) of the CAA; (7) Clean fuels for boilers under section 182(e)(3) of the CAA; (8) Transportation control measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA; (9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA; (10) Transportation controls under section 182(c)(5) of the CAA; (11) Vehicle miles traveled provisions under section 182(d)(1)(A) of the CAA; (12) $NO_X$ requirements under section 182(f) of the CAA; and (13) Attainment demonstration (or an alternative as provided for under 40 CFR section 51.905(a)(1)(ii)).

Under the Phase 1 Rule, those 1-hour nonattainment areas would remain subject to the anti-backsliding provisions until they were redesignated

[90] Nonattainment areas that were redesignated to attainment with an approved section 175A maintenance plan are referred to throughout this document as ''maintenance'' areas. CAA section 175A(a) requires an area to develop a ten-year maintenance plan in order to be redesignated to attainment. CAA section 175A(b) requires an area to submit a second ten-year plan 8 years after approval of the first plan.

[91] Unimplemented requirements in the SIP or those shown to be unnecessary for maintenance can be shifted to the contingency measures portion of the SIP upon redesignation. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993. As discussed elsewhere in this document, an exception is made for nonattainment NSR, which can be removed from the SIP completely, and need not be retained as a contingency measure after redesignation to attainment. (*See* discussion in text below.)

[92] *See* section IV.G of this proposal for a discussion of the timing of the 1997 ozone NAAQS revocation and related anti-backsliding requirements.

[93] While there was the possibility of an area meeting the 1997 ozone NAAQS while exceeding the 1-hour ozone NAAQS, in almost all instances the 1997 ozone NAAQS was the more stringent of the two.

[94] *See* 40 CFR 51.900(f).

to attainment for the 1997 ozone NAAQS. In order for an area to be redesignated for the 1997 ozone NAAQS, the state would need to show that the applicable nonattainment requirements for the 1-hour ozone NAAQS had been satisfied with respect to that area.

Upon redesignation of an area to attainment for the 1997 ozone NAAQS, a state could request that 1-hour anti-backsliding provisions contained in the SIP be shifted to the contingency measures portion of the SIP, based on a showing that active implementation of these measures was not necessary for attainment or maintenance of the NAAQS and that such a revision would be consistent with section 110(l). 40 CFR 51.905(b). (Provisions in the contingency measures portion of the maintenance SIP are not actively implemented, but are measures the state may implement if the area were to violate the standard again.[95]) The court in *South Coast* did not vacate the EPA's regulations concerning these thirteen ''applicable requirements.''

The Phase 1 Rule also provided that three requirements applicable under the 1-hour ozone NAAQS would no longer apply after revocation of that NAAQS: Nonattainment NSR, section 185 fee requirements and section 172(c)(9) and 182(b)(9) contingency measures for failure to attain the 1-hour ozone NAAQS by the applicable attainment date or to make reasonable further progress toward attainment of the standard. See 40 CFR 51.905(e).[96] As a result of the *South Coast* challenge to the Phase 1 Rule, the court vacated the regulatory provisions which had stated that these three obligations would no longer apply for purposes of the 1-hour ozone NAAQS upon revocation of that standard. *See South Coast,* 900–904. The following sections discuss how the EPA has addressed these three provisions since the *South Coast* decision.

*C. Background on Nonattainment NSR*

On October 3, 2007, the EPA issued a memorandum indicating that the vacatur of the nonattainment NSR provisions in the Phase 1 Rule by the *South Coast* court meant that states with 1-hour nonattainment areas that were subject to the anti-backsliding provisions remain subject to the obligation to include in their SIPs major source applicability thresholds and offset ratios consistent either with their nonattainment classification for the 1-hour ozone NAAQS or with their designation and classification for the 1997 ozone NAAQS, whichever is higher, as of the effective date of designation as nonattainment for the 1997 ozone NAAQS.[97]

Thereafter, in a separate proposed rulemaking action in 2010, the EPA proposed revised regulations regarding treatment of major source thresholds and offset ratios for areas that were designated nonattainment for the 1-hour ozone NAAQS at the time of designation as nonattainment for the 1997 ozone NAAQS. *See* ''Proposed Rule to Implement the 1997 Ozone National Ambient Air Quality Standard: New Source Review Anti-Backsliding Provisions for Former 1-Hour Ozone Standard,'' August 24, 2010, 75 FR 51960 (hereinafter ''NSR Anti-Backsliding Proposed Rule''). The EPA proposed that 1-hour ozone NAAQS nonattainment NSR requirements would apply in a manner similar to the requirements specifically listed as ''applicable requirements'' in the Phase 1 Rule.

The NSR Anti-Backsliding Proposed Rule further proposed that in situations where an area's classification under the 1-hour ozone NAAQS was higher than its classification under the 1997 ozone NAAQS, (1) the obligation to implement nonattainment NSR requirements associated with the area's classification under the 1-hour ozone NAAQS would continue to apply after the revocation of the 1-hour ozone NAAQS until the area is redesignated to attainment for the 1997 ozone NAAQS, and (2) once the obligation to implement 1-hour ozone NAAQS nonattainment NSR ceases to apply, the state may request removal of the 1-hour ozone NAAQS nonattainment NSR requirements, without retaining them as contingency measures. The EPA also requested comment on an alternate proposal that, if certain conditions were met, would allow a state to request removal of the 1-hour nonattainment NSR requirements prior to redesignation of the area to attainment for the 1997 ozone NAAQS.

The EPA has not finalized the proposed NSR Anti-Backsliding Rule, and does not intend to do so. This proposal replaces and supersedes that proposal, and the final rule will address all outstanding NSR anti-backsliding issues for both the 1-hour and 1997 ozone NAAQS. These include how ongoing obligations to implement anti-backsliding requirements pertaining to NSR thresholds and offset ratios under the 1-hour and 1997 ozone NAAQS can be terminated, in light of revocation of the 1-hour ozone NAAQS and the impending revocation of the 1997 ozone NAAQS.

*D. Background on Section 185 Fees*

Section 185 of the CAA applies to areas classified as Severe or Extreme for the 1-hour ozone NAAQS. This section states that if such an area fails to attain the 1-hour ozone NAAQS by the applicable attainment deadline,[98] each major stationary source of VOC and $NO_X$ [99] located in the area is required to pay a fee to the state for each calendar year following the attainment year for emissions above a baseline amount.[100] If the EPA determines that an area attained the standard as of the applicable attainment date, then the program does not take effect, even if the area subsequently violates that standard in a later year.

On January 5, 2010, the EPA issued a memorandum [101] that addressed the obligation of states with Severe or Extreme 1-hour ozone NAAQS nonattainment areas that did not attain by their attainment dates to collect fees from major sources. The memorandum discussed options for the EPA approval of SIPs that included an equivalent alternative program to the section 185 fee program specified in the CAA under

[95] States may adjust control strategies in the SIP or maintenance plan if they can demonstrate that the revision will not interfere with attainment or maintenance of the NAAQS, or any other CAA requirements. *See* CAA sections 175A and 110(l). Section 175A(d) of the CAA requires that contingency measures in the maintenance plan include all measures in the area's SIP before that area was regesignated to attainment.

[96] The fee obligations are also briefly addressed in section 181(b)(4), which cross-references the more detailed provisions found in section 185.

[97] Memorandum from Robert J. Meyers, Principal Deputy Administrator, Office of Air and Radiation, to EPA Regional Administrators, October 3, 2007, ''New Source Review (NSR) Aspects of the Decision of the U.S. Court of Appeals for the District of Columbia on the Phase 1 Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (NAAQS).''

[98] Under the 1990 CAA Amendments, nonattainment areas had until November 15 of the indicated year to attain: Marginal—1993; Moderate—1996; Serious—1999; Severe–15—2005, Severe–17—2007, Extreme—2010.

[99] While section 185 expressly mentions only VOC, section 182(f) extends the application of this provision to $NO_X$, by providing that ''plan provisions required under [subpart D] for major stationary sources of [VOC] shall also apply to major stationary sources . . . of [$NO_X$].''

[100] *See* section III.W of this proposal for a discussion of baseline amount. *See* also CAA section 185(b)(2) for the definition of baseline amount.

[101] Memo from Stephen D. Page to Regional Air Division Directors, Jan. 5, 2010, ''Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-Hour Ozone NAAQS.'' The EPA had previously issued guidance on baseline emissions under section 185. Memorandum from William T. Harnett, Director, Air Quality Policy Division, to EPA Regional Air Division Directors, March 21, 2008.

the principles of section 172(e), including an ''attainment alternative.'' The EPA stated that it would use federal notice-and-comment rulemaking procedures and seek public comment on any future approval of such alternative plans.

On March 5, 2010, the Natural Resources Defense Council (NRDC) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review the 2010 Stephen D. Page guidance memorandum on section 185 fee programs. NRDC argued that the EPA violated the Administrative Procedures Act by issuing the guidance without notice-and-comment rulemaking, and that both the section 185 alternate fee program and the ''attainment alternative'' in the guidance violated the CAA. Despite the fact that the EPA stated that approval of an alternative program would need to go through individual notice and comment rulemaking, the court concluded that the section 185 fee program guidance amounted to a rulemaking that should have provided notice and an opportunity to comment. The court thus vacated and remanded the EPA's guidance. *NRDC* v. *EPA,* 643 F.3d 311 (D.C. Cir. July 2011).

Although the court vacated the 2010 guidance memorandum on procedural grounds, it did not prohibit alternative programs, stating that ''neither the statute nor our case law obviously precludes that alternative.'' *Id* at 332. However, the court did express its disapproval of one alternative that was based in part on attainment of the 1997 ozone NAAQS. The court concluded that it would be impermissible to terminate an area's obligations under section 185 for the revoked 1-hour ozone NAAQS based solely on attainment of the 1997 ozone NAAQS. *NRDC,* 643 F.3d at 313. The EPA has taken into account the *NRDC* court's decision in developing the EPA's current approach to terminating anti-backsliding requirements for 1-hour ozone NAAQS section 185 fees, and that approach is reflected in today's proposal regarding terminating those anti-backsliding requirements for both the 1997 and 1-hour ozone NAAQS.

At this time, a relatively small group of areas are affected by uncertainties surrounding implementation and termination of 1-hour ozone NAAQS section 185 obligations. Separate rulemakings regarding individual 1-hour ozone NAAQS Severe and Extreme areas may resolve those issues before this implementation rule is finalized.

For areas subject to section 185 anti-backsliding requirements for the 1997 ozone NAAQS, this implementation rulemaking will have no near-term impact. The earliest attainment deadline for areas designated Severe or Extreme for that standard is 2019. Moreover, as yet no SIP submittals to establish section 185 penalty fee programs for the 1997 ozone NAAQS have become due.

In sum, the EPA's proposed approach to section 185 anti-backsliding requirements for the 1997 ozone NAAQS (which will be described below in section IV.H.2) should be viewed in the context of (1) EPA's ongoing efforts to address the section 185 anti-backsliding requirements for individual 1-hour ozone NAAQS Severe and Extreme areas in separate rulemakings, and (2) the fact that for 1997 ozone NAAQS Severe and Extreme areas, no fees can be triggered until 2020 (the calendar year after 2019).

### *E. Background on the Contingency Measures Requirement*

In response to the *South Coast* decision, the EPA issued a final regulation on May 14, 2012 (77 FR 28424), which added nonattainment area contingency measures for failure to attain or meet RFP milestones (section 172(c)(9) and 182(c)(9) contingency measures)[102] for the 1-hour ozone NAAQS to the list of ''applicable requirements'' in 40 CFR 51.900(f). These contingency measures were required for failure to meet an RFP milestone or to attain the 1-hour ozone NAAQS by the area's attainment date for the 1-hour ozone NAAQS.[103] The EPA is similarly proposing in this implementation rulemaking to include an anti-backsliding requirement for nonattainment area contingency measures for failure to attain or to meet an RFP milestone for the 1997 ozone NAAQS by the applicable deadlines for that NAAQS.

### *F. What is the EPA proposing regarding anti-backsliding requirements for the 1-hour and 1997 ozone NAAQS?*

We discuss here the EPA's proposed anti-backsliding requirements for the 1-hour and the 1997 ozone NAAQS in the context of implementing the 2008 ozone NAAQS. With the 2008 ozone NAAQS, as with the 1997 ozone NAAQS, the EPA strengthened rather than relaxed the ozone NAAQS. The transition from the 1997 to the 2008 ozone NAAQS is a straightforward lowering of the level with no change in the form of the standard, so it is unambiguous that the 2008 ozone NAAQS is always more stringent—never more lenient—than the 1997 ozone NAAQS. In these circumstances, section 172(e) on its face does not apply. In proposing the following anti-backsliding requirements, we look therefore to the principles but not to the letter of CAA section 172(e).

### *G. Timing of 1997 Ozone NAAQS Revocation and Related Anti-backsliding Requirements*

This section discusses the revocation of the 1997 ozone NAAQS and the application of anti-backsliding requirements for that NAAQS and for the previously-revoked 1-hour NAAQS. The EPA is proposing to revoke the 1997 ozone NAAQS on the date the final SIP Requirements Rule for the 2008 ozone NAAQS is published in the **Federal Register** for all purposes other than transportation conformity, where it has already been revoked. *See* proposed revision to 40 CFR 50.10(c).

The EPA believes it is appropriate to revoke rather than retain the 1997 standard for all remaining purposes.[104] The EPA has already taken final action revoking the 1997 primary and secondary ozone NAAQS for transportation conformity purposes only.[105] [106] The EPA explained its rationale for this action in the notice proposing revocation of the 1997 ozone NAAQS in the context of conformity.[107] The EPA's action ensures that only one ozone NAAQS—the more protective 2008 ozone NAAQS—applies, rather than having two standards, one of which the agency has determined is insufficiently protective, apply concurrently. The EPA relies on similar reasoning to support today's proposal to revoke the 1997 ozone NAAQS for all purposes.

At the time the EPA promulgated the 2008 ozone NAAQS, the Administrator determined that the 1997 ozone NAAQS

[102] These nonattainment area contingency measures are not to be confused with maintenance plan contingency measures for areas redesignated to attainment under CAA section 175A(d).

[103] The January 16, 2009, proposal (74 FR 2936) did not address when section 185 and NSR anti-backsliding requirements would be removed, indicating that the EPA would issue a separate **Federal Register** notice providing guidance on those issues. As discussed elsewhere, the EPA addressed nonattainment NSR anti-backsliding in its 2010 proposal (August 24, 2010, 75 FR 51960), and addressed section 185 in the 2010 guidance that has since been vacated.

[104] When the EPA revises a NAAQS, the prior NAAQS is not automatically revoked. Accordingly, both the 1997 ozone NAAQS and the more stringent 2008 ozone NAAQS are active standards unless and until the EPA takes action to revoke the previous 1997 ozone NAAQS.

[105] 77 FR 30160, 30162, May 21, 2012.

[106] The EPA's authority to revoke the standard for transportation purposes only has been challenged. To ensure that the 1997 ozone NAAQS is revoked for all purposes, today's proposal would revoke that standard for all purposes for which it has not yet been revoked.

[107] 77 FR 8197, 8205, February 14, 2012.

was no longer sufficient to protect public health and the environment with an adequate margin of safety and that it was therefore necessary to establish a more stringent standard.[108] In determining how to transition from the 1997 ozone NAAQS to the more stringent 2008 ozone NAAQS, the EPA is now presented with the same situation that we faced with the transition from the 1-hour ozone NAAQS to the more stringent 1997 ozone NAAQS. For that transition, our Phase 1 Rule for the 1997 ozone NAAQS revoked the 1-hour ozone NAAQS for all purposes.[109] The Phase 1 Rule also established comprehensive anti-backsliding provisions to ensure that the level of protection provided by requirements for the 1-hour ozone NAAQS would remain in place as areas transitioned to implementing the more stringent 1997 ozone standard. The D.C. Circuit upheld EPA's decision, recognizing EPA's ''authority to revoke the one-hour standard so long as adequate anti-backsliding measures are introduced.'' [110]

We believe that revoking the 1997 ozone NAAQS, as we have already done for transportation conformity, is now appropriate for all other purposes. The EPA believes that the permanent retention of two conflicting standards, differing only in the ozone concentrations they allow, could lead to unnecessary complexity and that it is inappropriate to retain the 1997 standard of .08 ppm, which is less protective of human health than the 2008 standard of .075 ppm. The EPA's reason for establishing the new standard as requisite to protect public health was its conclusion that the old standard was not adequate. Revoking rather than retaining that 1997 ozone NAAQS will facilitate a seamless transition from demonstrating compliance with the 1997 ozone NAAQS to demonstrating compliance with the more health and welfare protective 2008 ozone NAAQS. This approach will ensure the most efficient use of state and local resources in working toward attainment of the standard that EPA has determined is requisite to protect public health. Moreover, we believe that following the same course we followed in revoking the hourly standard by requiring adequate anti-backsliding measures will ensure continued momentum in states' efforts toward cleaner air.

Until the 1997 ozone NAAQS is revoked, that NAAQS remains in effect, in parallel with the 2008 ozone NAAQS, and continues to apply independently and by its own terms. Similarly, prior to its revocation, implementation of the 1997 ozone NAAQS continues under the Phase 2 Rule (Subpart X, 40 CFR 51.900 et seq.) as modified in accordance with the *South Coast* decision. After the 1997 ozone NAAQS is revoked, however, the EPA is proposing that the anti-backsliding requirements for that NAAQS, as proposed in this rulemaking, will become applicable.

After the revocation of a standard the EPA no longer intends to take action to designate or to redesignate areas for that standard. The extent of continued implementation of a revoked standard derives from administration of anti-backsliding requirements for that standard. After revocation of the 1997 ozone NAAQS, and because the 1-hour ozone NAAQS has already been revoked, obligations under these NAAQS will be defined by the anti-backsliding requirements that are specified for these NAAQS in the final rule for today's proposal.

Upon revocation of the 1997 ozone NAAQS, the EPA proposes that anti-backsliding provisions would apply to an area in accordance with its designations and, as applicable, its nonattainment classifications, for the 1997 (and, if applicable, 1-hour) ozone NAAQS at the time of revocation of the 1997 ozone NAAQS. The sections below discuss in detail the applicable requirements and how they would apply to areas with various designations and classifications for the 2008 and the revoked 1997 and 1-hour ozone NAAQS.

After revocation of the 1997 standard, the designations for that standard are no longer in effect, and the sole designations that remain in effect are those for the 2008 ozone NAAQS. However, the EPA is retaining the listing of the designations of areas for the revoked 1997 ozone NAAQS in 40 CFR part 81, for the sole purpose of identifying the anti-backsliding requirements that may apply to the areas as a result of these designations at the time of revocation. Accordingly, such references to historical designations for the revoked standard should not be viewed as current designations under CAA section 107.

The Phase 1 Rule revoked the 1-hour ozone NAAQS for all purposes 1 year after the effective date of initial area designations for the 1997 ozone NAAQS. The *South Coast* court rejected a challenge to this revocation, and determined that the EPA had the authority to revoke the 1-hour ozone NAAQS, subject to adequate anti-backsliding provisions.

The EPA is today proposing to exercise its authority to revoke the 1997 primary and secondary ozone NAAQS for all remaining purposes upon the publication of the final SIP Requirements Rule in the **Federal Register**. The EPA's Classifications Rule [111] for the 2008 ozone NAAQS provides that the 1997 ozone NAAQS will be revoked 1 year after the effective date of initial area designations for the 2008 ozone NAAQS for purposes of transportation conformity. Therefore, the 1997 ozone NAAQS will be revoked for all purposes upon the publication of the final SIP Requirements Rule in the **Federal Register**. However, the EPA is taking comment on alternate dates for revocation of the 1997 ozone NAAQS for all purposes other than transportation conformity. Alternate suggestions should explain the basis for the suggested date and be accompanied by technical and legal justifications.

We are proposing, for purposes of the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS, that an area that was designated as nonattainment for the 1997 ozone NAAQS and also is designated as nonattainment for the 2008 ozone NAAQS, and which has not been redesignated to attainment for the 1997 ozone NAAQS prior to the effective date of revocation of that NAAQS, will be subject to anti-backsliding requirements for the 1997 ozone NAAQS. To the extent that 1-hour ozone NAAQS anti-backsliding requirements are also applicable SIP requirements in such an area at the time the 1997 ozone NAAQS is revoked, we are proposing that those requirements will also remain applicable.[112]

The timing that EPA is proposing means that any 2008 ozone NAAQS nonattainment area that was previously a 1997 ozone NAAQS nonattainment area, but has been redesignated to attainment for the 1997 ozone NAAQS by the time of revocation of that NAAQS, will not be subject to the anti-backsliding requirements for the 1997 or the 1-hour ozone NAAQS. This is because when an area has been redesignated to attainment for an ozone NAAQS while that NAAQS is in effect, it has fulfilled all applicable

[108] 73 FR 16436, March 27, 2008.

[109] *See* 69 FR 23954.

[110] *South Coast Air Quality Management District* v. *EPA,* 472 F.3d at 899.

[111] 77 FR 30160, May 21, 2012.

[112] As a practical matter, where a 2008 ozone nonattainment area is subject to anti-backsliding requirements for both the 1997 ozone NAAQS and the 1-hour ozone NAAQS, the anti-backsliding requirements that will apply to the area for NSR and Title V will be those corresponding to the higher of the two nonattainment classifications that the area possessed with regard to the 1997 and 1-hour ozone NAAQS at the time of revocation of the respective ozone NAAQS.

requirements for that NAAQS, including applicable anti-backsliding requirements for any prior ozone NAAQS. The area is, therefore, not subject to anti-backsliding requirements for the revoked ozone NAAQS or any prior ozone standard(s).

During the period prior to revocation of the 1997 ozone NAAQS, that NAAQS will remain in effect and applicable requirements for that NAAQS, and any applicable 1-hour ozone NAAQS anti-backsliding requirements, will apply as usual. Redesignations and reclassifications for the 1997 ozone NAAQS may continue up to the time of revocation of that standard.

This approach of establishing anti-backsliding requirements is consistent with the EPA's actual practice in the transition from the 1-hour to the 1997 ozone NAAQS.[113] It would not make sense to select a point prior to revocation of the 1997 ozone NAAQS for the anti-backsliding requirements associated with that standard to take effect, since prior to revocation of the 1997 ozone NAAQS, that NAAQS remains in effect and still applies directly, and an area can still be redesignated to attainment for that standard or reclassified to a higher nonattainment classification.[114] In fact, the status of many areas with respect to designation and classification for the 1997 ozone NAAQS has already changed since promulgation of the 2008 ozone NAAQS. Thus, the EPA concludes that establishing the date of revocation of the 1997 ozone NAAQS as the time for anti-backsliding requirements for that NAAQS to take effect is reasonable and consistent with past practice under the Phase 1 Rule.

*H. What are the applicable requirements for anti-backsliding purposes during the transition to the 2008 ozone NAAQS?*

The EPA in this rulemaking is proposing to establish subpart AA, 40 CFR 51.1100 *et seq.,* which will provide comprehensive anti-backsliding requirements for transition to the 2008 ozone NAAQS. The EPA is proposing that, upon revocation of the 1997 ozone NAAQS, subpart X, 40 CFR 51.900 *et seq.,* be effectively replaced by the proposed subpart AA.

The proposed subpart AA addresses anti-backsliding requirements for both the previously revoked 1-hour ozone NAAQS and the 1997 ozone NAAQS in a consolidated and streamlined fashion. Areas designated nonattainment for the 2008 ozone NAAQS and also designated nonattainment for either or both the 1-hour or 1997 ozone NAAQS at the time of revocation of the 1997 ozone NAAQS will be subject to section 51.1100(o). This provision specifies the list of ''applicable requirements'' that will apply as anti-backsliding requirements for the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS. At the time of revocation of the 1997 ozone NAAQS, section 51.1100(o) will replace 40 CFR 51.900(f). The EPA is proposing as ''applicable requirements'' the requirements that were previously listed in section 51.900(f) (excepting only Stage II vapor recovery),[115] as well as the three anti-backsliding requirements that were included as a result of the *South Coast* decision: nonattainment NSR thresholds and offset ratios, nonattainment contingency measures for failure to attain by the applicable deadline or to meet RFP milestones, and section 185 fee program requirements. Since the *South Coast* decision, the EPA has been including these three requirements as anti-backsliding requirements for the 1-hour ozone NAAQS for the purpose of discharging its obligations to effectuate anti-backsliding for that standard. Proposed section 51.1100(o) contains definitions of the EPA's proposed applicable requirements for the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS. These applicable requirements as proposed in section 51.1100(o) include the following: (1) RACT; (2) vehicle I/M programs; (3) Major source applicability cut-offs for purposes of RACT; (4) ROP and/or RFP reductions; (5) the Clean fuels fleet program under section 183(c)(4) of the CAA; (6) Clean fuels for boilers under section 182(e)(3) of the CAA; (7) Transportation control measures during heavy traffic hours as provided under section 182(e)(4) of the CAA; (8) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA; (9) Transportation controls under section 182(c)(5) of the CAA; (10) Vehicle miles traveled provisions under section 182(d)(1)(A) of the CAA; (11) $NO_X$ requirements under section 182(f) of the CAA; (12) Attainment demonstrations; (13) Nonattainment contingency measures, (14) Nonattainment NSR requirements, and (15) Section 185 requirements for Severe and Extreme areas.

A number of areas designated nonattainment for the 2008 ozone NAAQS may retain residual attainment-related SIP obligations for the 1997 ozone NAAQS. It is possible that SIP revisions to address obligations under the 2008 ozone NAAQS can also satisfy similar outstanding SIP obligations to prevent backsliding for revoked 1997 and 1-hour ozone NAAQS. For areas with residual attainment-linked requirements for the revoked 1997 ozone NAAQS, the EPA has taken into account the close relationship in timing and nature of attainment-linked obligations for the 1997 and 2008 standards. The 2008 ozone NAAQS incorporates and supersedes the 1997 ozone NAAQS, and the attainment deadline for the 2008 ozone NAAQS is near-term. Thus the EPA believes it is critical to avoid the duplication of effort that requiring separate SIP submissions for the 1997 and 2008 ozone NAAQS would create. The best course would be to integrate, wherever possible, the attainment planning requirements for the revoked and current ozone NAAQS. At this time of scarce resources the states and the EPA should strive to develop SIP submissions that achieve the goals of both the 1997 and the 2008 ozone NAAQS. For example, areas that have not yet fully attained the 1997 ozone NAAQS and have an obligation to continue meeting planning and control requirements to attain as expeditiously as practicable may find it more efficient to develop plans and controls that achieve the goals of both the 1997 and the 2008 ozone NAAQS. The need for an approach similar to the one EPA took in the transition from the 1-hour ozone NAAQS to the 1997 ozone NAAQS is heightened as we move on to a third more stringent ozone NAAQS. In the Phase 1 Rule (69 FR 23975–6), an attainment-related SIP submission to satisfy a requirement for the 1997 ozone NAAQS could also satisfy an outstanding 1-hour ozone NAAQS SIP requirement. At this time it is even more important than in the previous transition to coordinate efforts and avoid overlapping and redundant planning efforts.

In this proposal, the EPA is also proposing a different approach to the Stage II Vapor Recovery requirement than was contained in 51.900(f)(5) in the Phase 1 Rule. In May 2012,[116] the EPA

[113] Although section 51.905(a) specified that the anti-backsliding requirements ''attached'' at the time of designation for the 1997 ozone NAAQS, areas were still able to redesignate to attainment for the 1-hour ozone NAAQS up to the date of revocation of that standard.

[114] *See,* for example, the redesignations to 1-hour attainment for Phoenix (70 FR 34362, June 14, 2005) and Atlanta (70 FR 34660, June 15, 2005).

[115] Under CAA section 202(a)(6), the EPA found that onboard refueling vapor recovery (ORVR) systems are in widespread use in the motor vehicle fleet and waived the section 182(b)(3) Stage II vapor recovery requirement for Serious and higher ozone nonattainment areas on May 16, 2012 (77 FR 28772). Thus, in this proposal, the section 182(b)(3) Stage II requirement is omitted from the list of applicable requirements in 51.1100(o).

[116] 77 FR 28772, May 16, 2012.

determined that ORVR systems are in widespread use nationally, and the EPA waived the CAA section 182(b)(3) requirement for states to adopt and submit programs for implementation of the Stage II vapor recovery system at GDFs located in Serious and above ozone nonattainment areas, pursuant to authority provided in CAA section 202(b)(6). As a result of this waiver, states may seek EPA approval to discontinue implementing an existing Stage II Control Program for GDFs in Serious and above ozone nonattainment areas, subject to (1) the submittal of an approvable demonstration showing that removing the program from the SIP would not interfere with attainment and maintenance of the NAAQS pursuant to section 110(l), and (2) the submittal of an approvable demonstration under section 193 for Stage II programs that were in effect in 1990. Accordingly, in this proposed rule, the EPA is proposing a revision to the existing anti-backsliding rules and not including the Stage II vapor recovery program previously required by CAA section 182(b)(3) in the list of measures that need to be retained for anti-backsliding purposes. Areas that already have Stage II programs in their SIPs could remove these programs if they make the appropriate showings as detailed in CAA sections 110(l) and 193, following EPA approval of such SIP revisions.[117] These revisions would not need to move Stage II requirements to contingency measures when Stage II is removed from the active SIP. Today's proposed rule would have no effect on the continuing independent CAA section 184(b)(2) requirement for OTR states to implement Stage II programs or measures capable of achieving emissions reductions comparable to those achieved by Stage II.

The EPA discusses below the three anti-backsliding requirements that proposed section 51.1100 would add to the applicable requirements originally contained in section 51.900(f) of the rule.

1. NSR

a. NSR for Areas Designated Nonattainment for the 2008 Ozone NAAQS

In response to the *South Coast* case, the EPA has been requiring areas designated nonattainment for the 1997 ozone NAAQS that are subject to anti-backsliding requirements for the 1-hour NAAQS to implement the nonattainment NSR requirements that applied at the time of revocation of the 1-hour ozone NAAQS, where such requirements are more stringent than those based on the area's classification for the 1997 ozone NAAQS. In keeping with its practice following the *South Coast* decision, the EPA is proposing that nonattainment NSR be added to the list of applicable requirements. Thus, for areas designated nonattainment for the 2008 ozone NAAQS, nonattainment NSR will be required for any prior ozone standard for which they remain designated nonattainment. As explained later in this preamble, however, areas that remained designated nonattainment for the 1-hour ozone NAAQS at the time of its revocation, but were subsequently redesignated to attainment for the 1997 ozone NAAQS, would not be subject to this obligation. In practical terms, the obligation to implement nonattainment NSR requirements associated with two or more standards means that the area must implement the thresholds and offset ratios associated with the highest nonattainment classification. In the section on termination of anti-backsliding requirements below, the EPA is proposing two options for lifting 1997 and 1-hour ozone NAAQS nonattainment NSR requirements for areas designated nonattainment for the 2008 ozone NAAQS: redesignation for the 2008 NAAQS, or a ''redesignation substitute'' for the 1997 and/or 1-hour ozone NAAQS. The EPA is also soliciting comment from the public on additional routes to lifting nonattainment NSR requirements tied to the revoked 1997 and 1-hour ozone NAAQS, in areas where the 2008 nonattainment NSR requirements would remain in place. These additional processes, like the redesignation substitute option the EPA is proposing, would operate to lift the nonattainment NSR requirements for the revoked NAAQS while retaining the NSR requirements for the 2008 ozone NAAQS. The EPA asks that commenters provide supporting legal rationales for any additional option, taking into account the DC Circuit's decision in *South Coast.* The timing and basis for termination of nonattainment NSR requirements for the revoked NAAQS is discussed below in section IV.J.

b. NSR for Areas Designated Attainment for the 2008 Ozone NAAQS

This proposal also addresses whether nonattainment NSR must continue to be implemented in areas initially designated attainment[118] for the 2008 ozone NAAQS, but that were still designated nonattainment for the 1997 ozone NAAQS as of the effective date of their attainment designations under the 2008 ozone NAAQS. Some of the areas that have been designated as attainment for the 2008 ozone NAAQS are still designated as nonattainment for the 1997 ozone NAAQS.

Until the 1997 ozone NAAQS is revoked, we propose that nonattainment NSR would continue to apply in areas designated as attainment for the 2008 ozone NAAQS but nonattainment for the 1997 ozone NAAQS. This approach is consistent with the exemption in the PSD regulations at 40 CFR 51.166(i)(2) and 52.21(i)(2), which provides that PSD requirements do not apply with respect to a particular pollutant if the new source or modification is located in an area designated as nonattainment under CAA section 107 as to that pollutant.

We propose that after the 1997 ozone NAAQS is revoked, areas designated as attainment for the 2008 ozone NAAQS would not be required to retain in their SIPs nonattainment NSR programs for ozone. Instead, such areas would be required to implement Prevention of Significant Deterioration (PSD) requirements, consistent with their attainment designation for the 2008 ozone NAAQS, notwithstanding any remaining references to nonattainment designations for the 1997 ozone NAAQS in 40 CFR Part 81.

When we revoke the 1997 ozone NAAQS, the designations for that standard have no further effect except as reference for anti-backsliding purposes. We are retaining references to the designations for the revoked standard in 40 CFR part 81 solely for anti-backsliding purposes for areas designated nonattainment for the 2008 ozone NAAQS. Accordingly, such references to historical nonattainment designations for the revoked standard should not be viewed as current ''nonattainment designation[s] under CAA § 107'' within the meaning of 40 CFR 51.166(i)(2) and 52.21(i)(2) and, therefore, do not trigger the exemption from PSD requirements otherwise resulting from those provisions.

While the EPA interprets the present regulatory text in 40 CFR 51.166(i)(2) and 52.21(i)(2) in the manner described above, these provisions do not expressly say that a nonattainment designation for a revoked standard does not trigger the

[117] *See* U.S. EPA Office of Air Quality Planning and Standards, ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures,'' August 7, 2012 (EPA–457/B–12–001).

[118] Applies to areas designated either ''unclassifiable/attainment'' (hereafter referred to as ''attainment'' areas) or ''unclassifiable,'' as defined in CAA § 107(d)(1)(A).

exemption. To avoid confusion in the regulatory text and to clarify its intent, we are alternatively proposing that an amendment to 40 CFR 51.166(i)(2) and 52.21(i)(2) would be appropriate to make it clear that a nonattainment designation for a revoked NAAQS, once the revocation becomes effective in an area, would not trigger the PSD exemption in those provisions and would not prevent application of PSD requirements for that pollutant. We request comment on whether such an amendment to 40 CFR 51.166(i)(2) and 52.21(i)(2) is necessary or whether it is sufficient for the EPA to articulate the interpretation of these provisions described in the preceding paragraph. We also request comment on how such an amendment to 40 CFR 51.166(i)(2) and 52.21(i)(2) should be worded.

The EPA took a similar approach in rules governing the transition from the 1-hour to the 1997 ozone NAAQS. This approach would not apply to areas located in the OTR and designated attainment, since the CAA requires these areas to remain subject to Moderate area nonattainment NSR requirements. As explained more fully in the NSR Anti-Backsliding Proposed Rule, the EPA is proposing this approach because the EPA does not interpret the *South Coast* decision as requiring that NSR requirements associated with a previous standard be retained in areas designated attainment for the current standard. *See* 75 FR 51964. The issue before the court in *South Coast* involved the substitution of one set of nonattainment NSR requirements for another, not the replacement of nonattainment NSR with PSD requirements. The EPA's determination that nonattainment NSR does not apply to areas designated attainment for the current NAAQS and thus is not required to remain in the SIP for such areas is consistent with *Greenbaum* v. *EPA,* 370 F.3d at 536.[119]

2. Section 185 Fee Programs

States with nonattainment areas classified as Severe or Extreme for a prior NAAQS at the time that NAAQS is revoked remain subject to the requirements of section 185 with respect to that NAAQS. This approach is consistent with the July 2011 *NRDC* court decision on the EPA's previously-issued section 185 guidance. As previously discussed, EPA has been working with states to address the section 185 requirements for the 1-hour ozone NAAQS. The timeline for section 185 requirements for the 1997 ozone NAAQS differs from that for the 1-hour ozone NAAQS; the earliest attainment deadline for a Severe area under the 1997 ozone NAAQS is 2019, and no 1997 ozone penalty fee program has yet become due.[120] As in the case of NSR, the section below on termination of anti-backsliding requirements proposes two alternative approaches to terminating section 185 anti-backsliding requirements for both the 1-hour and 1997 ozone NAAQS. Section IV.J goes into detail on the two proposed routes to terminate section 185 anti-backsliding requirements: redesignating to attainment for the 2008 ozone NAAQS, or providing a redesignation substitute for the revoked NAAQS triggering the section 185 requirement.

3. Contingency Measures Under Sections 172(c)(9) and 182(c)(9)

The EPA's recent final rulemaking (May 14, 2012, 77 FR 28424) set forth the EPA's rationale for including, as an applicable 1-hour ozone NAAQS anti-backsliding requirement, nonattainment area contingency requirements for failure to attain the 1-hour NAAQS by the applicable deadline or to meet RFP milestones with respect to that NAAQS. The EPA is proposing to adopt the same contingency requirements for failure to attain the 1997 ozone NAAQS by the applicable deadlines or to meet RFP milestones with respect to that NAAQS, based on the same rationale that the agency articulated in its May 14, 2012 rulemaking.

*I. Application of Transition Requirements to Nonattainment and Attainment Areas*

1. Introduction

This section discusses how the EPA's proposed transition requirements will apply to various types of areas. The general principle is to apply transition requirements depending on how the area is designated—attainment or nonattainment—for the 2008 ozone NAAQS, while taking into account the area's status with respect to prior standards.[121] Table 2 provides a summary of the four transition scenarios, and the proposed requirements that would apply for each of those scenarios.[122] The following sections describe each scenario in detail. In Table 2 and in the subsequent sections, for purposes of determining an area's transition requirements, we first look to the area's designation and classification for the 2008 ozone NAAQS. We then determine the area's designation and classification status for the 1997 ozone NAAQS as of the effective date the 1997 ozone NAAQS is revoked. Finally, where appropriate, we determine whether anti-backsliding requirements for the 1-hour ozone NAAQS apply in the area and, if so, we determine the area's designation and classification status for the 1-hour ozone NAAQS as of the date the 1-hour NAAQS was revoked.[123] For ease of reference, throughout the remainder of this preamble, we refer to an area's designation and classification for the 1997 ozone NAAQS at the time of revocation of that NAAQS, simply as the area's ''designation'' and ''classification'' for the 1997 ozone NAAQS. Similarly, we refer to an area's designation and classification for the 1-hour ozone NAAQS at the time of revocation of that NAAQS (June 15, 2005 for most areas), simply as the area's ''designation'' and ''classification'' for the 1-hour ozone NAAQS.

[119] ''It would make little sense for [nonattainment NSR] to be included in the post-attainment SIP, as the Clean Air Act . . . explicitly states that attainment area SIPs must include a PSD program.''

[120] Under the 1997 ozone NAAQS, areas classified Severe-15 must attain by 2019, Severe-17 areas by 2021, and Extreme areas by 2024.

[121] One area, the Uintah Basin, UT, was designated as ''unclassifiable,'' and for purposes here would be treated like an area designated ''attainment.''

[122] Section IV.J details the proposed routes to satisfy the anti-backsliding requirements listed in Table 2.

[123] If the nonattainment area was initially designated attainment for the 1997 ozone NAAQS or was redesignated to attainment (''Maintenance'') for the 1997 ozone NAAQS prior to the date of revocation of the 1997 NAAQS, then the area has already fulfilled any applicable 1-hour anti-backsliding requirements. For ease of reference, we refer to these areas as ''Maintenance'' areas.

TABLE 2—2008 OZONE NAAQS TRANSITION OBLIGATIONS

| Designation for 2008 NAAQS | Designation for previous NAAQS (at time of revocation) | Proposed NSR/PSD obligations | Other proposed transition obligations |
|---|---|---|---|
| 1. Attainment | Attainment/Maintenance | PSD remains in effect | —Area remains subject to existing section 175A maintenance plan for the previous ozone NAAQS and requirements already in the SIP, subject to revision consistent with sections 110(l) and 193.<br>—Section 175A maintenance plan satisfies maintenance requirement under section 110(a)(1). |
| 2. Attainment | Nonattainment for 1997 ozone NAAQS only; or nonattainment for 1997 *and* 1-hour NAAQS. | Nonattainment NSR in effect until revocation of the 1997 ozone NAAQS; then PSD applies. | —Area remains subject to measures to meet nonattainment requirements already in its adopted SIP. Removable only with a section 110(l) demonstration and a section 193 demonstration if applicable.<br>—Two alternatives to address section 110(a)(1) maintenance provision: (a) Area's approved PSD SIP satisfies section 110(a)(1) maintenance provision, or<br>(b) additional maintenance showing under section 110(a)(1). |
| 3. Nonattainment | Attainment/Maintenance | Nonattainment NSR applies based on 2008 ozone NAAQS classification. | —Area remains subject to existing section 175A maintenance plan for the previous NAAQS and requirements already in the SIP, subject to revision consistent with sections 110(l) and 193. |
| 4. Nonattainment | Nonattainment for 1997 ozone NAAQS only; or nonattainment for 1997 and 1-hour ozone NAAQS. | Nonattainment NSR applies based on highest applicable classification. | —Area subject to all applicable anti-backsliding requirements for 1-hr and/or 1997 NAAQS.<br>—Anti-backsliding obligations lifted when the area either is redesignated to attainment for the 2008 ozone NAAQS, or the EPA approves a redesignation substitute for the revoked 1-hour or 1997 NAAQS<br>—EPA solicits comment on additional options for lifting anti-backsliding obligations. |

2. Requirements for Areas Designated Attainment for the 2008 Ozone NAAQS and (i) Maintenance for the 1997 Ozone NAAQS or (ii) Nonattainment for the 1997 Ozone NAAQS

In this section the EPA considers the requirements applicable after revocation of the 1997 ozone NAAQS, to (i) areas that are designated attainment for the 2008 ozone NAAQS and attainment for the 1997 ozone NAAQS with an approved 175A maintenance plan (hereafter ''maintenance for the 1997 ozone NAAQS''), as of the date of revocation of the 1997 ozone NAAQS, and to (ii) areas that are designated as attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS. The EPA is proposing a preferred approach and an alternative, less-preferred approach for requirements for areas that are designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS, and a single approach for requirements for areas that are designated attainment for the 2008 ozone NAAQS and maintenance for the 1997 ozone NAAQS. Appendix D contains a full list of these areas.

a. Background and Overview

The Phase 1 Rule for implementation of the 1997 ozone NAAQS adopted 40 CFR 51.905(c) and (d). These sections specified requirements applicable to areas designated attainment for the 1997 ozone NAAQS, and designated nonattainment or redesignated to attainment for the 1-hour ozone NAAQS. These areas were no longer obligated to adopt any outstanding applicable measures for the 1-hour ozone NAAQS. Sections 51.905(c) and (d) required, however, that these areas submit, within 3 years of the effective date of designation as attainment for the 1997 ozone NAAQS, a maintenance plan under CAA section 110(a)(1) for the 1997 ozone NAAQS.[124] Due to changes that have occurred since 2004, the EPA is now proposing as its preferred approach for an area designated attainment for the 2008 ozone NAAQS and redesignated to attainment for the 1997 ozone NAAQS (as of revocation of the 1997 ozone NAAQS), that the area's approved 175A maintenance plan will satisfy its maintenance plan obligation for the 2008 ozone NAAQS under section 110(a)(1). The EPA is also proposing as its preferred approach for an area designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS (as of revocation of the 1997 ozone NAAQS), that the area's approved PSD SIP will satisfy its maintenance plan obligation for the 2008 ozone NAAQS under section 110(a)(1).

The EPA believes this is appropriate for several reasons. First, many of these areas are now subject to a number of national rules which were not applicable in 2004. These national rules impose ozone precursor emissions limits on important emission source categories, independent of the provisions of any area-specific maintenance or anti-backsliding plan for ozone. These rules include the several significant mobile source regulations, emission standards for toxic VOCs, power plant regulations reducing $NO_X$ emissions, and the Regional Haze Rule.[125] Second, since 2004 a number of

[124] This maintenance plan was required to cover a 10-year period starting at the effective date of designation and to include contingency measures.

[125] Mobile source regulations that have begun to reduce emissions since 2004 include the Tier 2 emissions standards for light-duty vehicles, the 2007 emissions standards for heavy-duty on-road vehicles, the clean air non-road diesel rule that covers a wide variety of non-road equipment and engines, and the locomotive and marine rule that establishes more stringent emissions standards for

these areas have also reduced emissions in order to attain the 1997 and/or 2006 $PM_{2.5}$ NAAQS. These $PM_{2.5}$-related emissions reductions also help reduce and limit growth in ozone precursor emissions. Some of these measures will produce large reductions during the 10-year period over which a maintenance plan could be required. Third, the EPA anticipates that it will complete the next review of the ozone NAAQS before any additional section 110(a)(1) maintenance plan requirements could be due with respect to the 2008 ozone NAAQS. Under these circumstances, imposing additional section 110(a)(1) maintenance plan requirements for areas attaining the 2008 ozone NAAQS could, without compensating benefit, create a conflict for state resources needed to address a more protective ozone standard. Finally, these areas are meeting a more protective NAAQS that is directly comparable in form to the 1997 ozone NAAQS, which was not the case when the anti-backsliding requirements for the 1-hour standard were created.

An area designated attainment for the 2008 ozone NAAQS has already attained the most stringent existing standard. Except for the substitution of PSD for nonattainment NSR requirements, the area remains subject to the nonattainment requirements already approved into the SIP, which can be revised only upon a showing that such revision is consistent with CAA sections 110(l) and 193.[126] These sections prevent any SIP revisions that would increase emissions of any pollutant related to a NAAQS unless a demonstration of continued attainment and maintenance accompanies the revision, and thus these sections effectively function as anti-backsliding provisions. Finally, because the form of the 1997 and 2008 ozone NAAQS is the same, there is no possibility that an area attaining the 2008 ozone NAAQS could be violating the 1997 ozone NAAQS, which is unlike the relationship that existed between the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. Thus, the EPA believes that designation as attainment for the 2008 ozone NAAQS should result in no additional new obligations beyond PSD for this large group of areas, regardless of their status for prior standards.

As a result of these considerations, the EPA is proposing an approach more suited to areas designated attainment for the 2008 ozone NAAQS than the approach contained in the Phase 1 Rule. Below we describe our proposals for areas that are designated attainment for the 2008 ozone NAAQS and designated (i) maintenance or (ii) nonattainment for the 1997 ozone NAAQS.

b. Proposals

i. Areas Designated Attainment for the 2008 Ozone NAAQS and Maintenance for the 1997 Ozone NAAQS

For areas designated attainment for the 2008 ozone NAAQS and maintenance for the 1997 ozone NAAQS (as of the date of revocation of the 1997 ozone NAAQS), the EPA is proposing that the area's approved section 175A maintenance plan for the revoked 1997 ozone NAAQS satisfies both its obligations for maintenance under section 110(a)(1) for the 2008 ozone NAAQS and its obligation to submit a second approvable maintenance plan under section 175A for the revoked 1997 ozone NAAQS. The EPA's reasoning is as follows. All areas in this group are already subject to a section 175A maintenance plan for the revoked 1997 ozone NAAQS, and have been both redesignated to attainment for the 1997 ozone NAAQS and designated attainment for the more stringent 2008 ozone NAAQS. As explained elsewhere, the section 175A maintenance plan for the 1997 ozone NAAQS satisfies the anti-backsliding requirements of these areas for all prior standards. Any further 110(a)(1) maintenance plan requirement under the 2008 ozone NAAQS would be unnecessarily burdensome. No revision to the section 175A maintenance plans for these areas can be approved unless it complies with the anti-backsliding checks in CAA sections 110(l) and 193. Thus, the EPA believes strongly that there is no justification for additional maintenance plan burdens to be imposed on these areas solely because at one time they were designated nonattainment under the revoked 1997 ozone NAAQS. Since these areas were redesignated to attainment for the 1997 ozone NAAQS prior to its revocation, the EPA's proposed approach recognizes and reflects that status.

ii. Areas Designated Attainment for the 2008 Ozone NAAQS and Nonattainment for the 1997 Ozone NAAQS

The EPA is proposing as its preferred approach that areas designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS (as of revocation of the 1997 ozone NAAQS) not be required to adopt any outstanding applicable requirements for the revoked 1997 standard. This approach is similar to the approach followed in the Phase 1 Rule. The EPA also proposes, in a departure from the Phase 1 Rule, that the approved PSD SIPs for these areas satisfy the obligation to submit an approvable maintenance plan for the 2008 ozone NAAQS under section 110(a)(1). The EPA's rationale for this approach is as follows: areas designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS (as of revocation of the 1997 ozone NAAQS) have already attained the most stringent existing standard. These areas thus have developed nonattainment SIPs that in combination with federal measures and emissions controls in upwind areas have produced sufficient emissions reductions to achieve the more protective 2008 ozone NAAQS. They remain subject to the 1997 nonattainment area requirements already approved into the SIP, which can be revised only upon a showing that such revision complies with the anti-backsliding checks in CAA sections 110(l) and 193. At this time, and given the succession of NAAQS of increasing stringency that has occurred, the EPA believes that the burden of developing an approvable 110(a)(1) maintenance plan for the 2008 ozone NAAQS would outweigh any compensating benefit for an area that is already attaining that NAAQS and that is subject to prior nonattainment requirements which are already incorporated into the SIP.

The EPA is proposing a second, and less preferred, alternative for areas designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS as of revocation of the 1997 ozone NAAQS. Similar to the approach taken in the Phase 1 Rule, under this alternative we propose that the area be required to show maintenance for the 2008 ozone NAAQS. (*See* proposed regulatory text section 51.1105.) This maintenance showing would be due 3 years after the effective date of designations for the 2008 ozone NAAQS. The maintenance showing would contain a demonstration of continued maintenance of the 2008 ozone NAAQS in the area for ten years from the effective date of the area's designation as attainment for the 2008 ozone NAAQS. The EPA proposes a maintenance showing in a form other than a formal SIP revision. If the EPA were to adopt this option, the EPA would provide guidance regarding the specific elements of the maintenance showing. The EPA seeks comment on this option.

engines used in locomotives and in marine applications.

[126] It should be noted that transportation conformity requirements no longer apply in these areas after the effective date of the revocation of the 1997 ozone NAAQS. (77 FR 30160, May 21, 2012).

3. Areas Designated Nonattainment for the 2008 Ozone NAAQS

In the next sections the EPA addresses the transition requirements for three distinct groups of areas designated nonattainment for the 2008 ozone NAAQS: those which are also designated nonattainment for the 1997 ozone NAAQS as of the time of revocation of that NAAQS; those which are designated maintenance for the 1997 ozone NAAQS as of the time of revocation of that NAAQS; and those which are also designated nonattainment for both the 1997 and the previously revoked 1-hour ozone NAAQS as of the time of revocation of the 1997 NAAQS. *See* Appendix D for a list of these areas.

The EPA is proposing that areas designated nonattainment for the 2008 ozone NAAQS and also designated nonattainment for the 1997 ozone NAAQS, or for both the 1997 and the 1-hour ozone NAAQS, be subject to anti-backsliding provisions as interpreted by 51.1105. In particular, we are proposing that these areas be subject to applicable requirements for any prior standard for which they remain designated nonattainment at the time of revocation of the 1997 ozone NAAQS.[127] As was also the case in the proposed NSR Anti-Backsliding Rule, 75 FR 51965, neither of the EPA's current proposed approaches to allowing removal of NSR anti-backsliding requirements for a previous NAAQS (as discussed in section IV.J) would have an effect on any source permit conditions established during the time period in which a major NSR program pursuant to a previous NAAQS was applied. The NSR regulations do not provide a mechanism for major NSR permit conditions to be removed from a permit or modified when a SIP is later revised so as to remove or change NSR thresholds and/or offset requirements for purposes of future permitting. Replacement or removal of NSR SIP provisions does not relieve sources of their obligations under previously established permit conditions.

Under this proposed rule, areas that are designated nonattainment for the 2008 ozone NAAQS and are also designated nonattainment for a prior ozone NAAQS (as of the revocation of the 1997 NAAQS) will be subject to applicable requirements for that prior NAAQS, as well as the pertinent requirements for the current 2008 ozone NAAQS. In addition, if a state seeks to revise any measure already approved into its SIP for any prior standard, the revision must comply with the anti-backsliding checks in CAA sections 110(l) and 193.

a. Areas Designated Nonattainment for the 2008 Ozone NAAQS and Maintenance for the 1997 Ozone NAAQS

The EPA is proposing that for these areas, the area's approved section 175A maintenance plan for the revoked 1997 ozone NAAQS would satisfy the obligation to submit a second approvable maintenance plan under section 175A for the revoked 1997 ozone NAAQS. The EPA's reasoning is as follows. All areas in this group are already subject to an approved section 175A maintenance plan for the revoked 1997 ozone NAAQS and have been redesignated to attainment for the 1997 ozone NAAQS. As explained elsewhere, the approval of the redesignation and of the section 175A maintenance plan for the 1997 ozone NAAQS required the EPA to determine that the anti-backsliding requirements of these areas for the 1-hour standard, as well as those requirements applicable for the 1997 standard, have been met. Thus EPA's approvals of the redesignation request and the maintenance plan for the 1997 standard signify not only that all applicable requirements for the 1997 ozone standard have been met, but also that all applicable anti-backsliding measures for the 1-hour standard have been adopted and approved into the SIP. No revision to the section 175A maintenance plans for these areas can be approved unless it complies with the anti-backsliding checks in CAA sections 110(l) and 193.

These areas are also designated nonattainment for the more stringent 2008 ozone NAAQS and therefore are subject to nonattainment NSR and other nonattainment requirements for their classification under the more stringent 2008 ozone NAAQS. Thus, the EPA believes strongly that there is no justification for a second 175A maintenance plan to be imposed on these areas solely because at one time they were designated nonattainment under the revoked 1997 ozone NAAQS. Since these areas were redesignated to attainment for the 1997 ozone NAAQS prior to its revocation, the EPA's proposed approach recognizes and reflects that status.

b. 2008 Nonattainment Areas Also Designated Nonattainment for the 1997 Ozone NAAQS But Not for the 1-Hour Ozone NAAQS

To better understand how the anti-backsliding requirements will affect these areas, it is helpful to review which areas are included in this group and their status with respect to attainment of the 1997 ozone NAAQS. Table 1 in Appendix D lists the fifteen areas that are designated nonattainment for the 2008 ozone NAAQS and which, at the time of proposal of this rule, currently remain designated nonattainment for the 1997 ozone NAAQS but not for the 1-hour ozone NAAQS.[128] As Table 1 in Appendix D shows, even though these areas are currently designated nonattainment for the 1997 ozone NAAQS, the EPA anticipates making final determinations that more than half of these areas have attained the 1997 ozone NAAQS prior to the date of revocation of the 1997 ozone NAAQS pursuant to the EPA's ''Clean Data'' regulation, 40 CFR 51.918, and anticipates that several of these will have been redesignated to maintenance for that standard. A determination of attainment suspends obligations for states to submit attainment-related planning requirements for the 1997 ozone NAAQS for those areas as long as they continue to attain that standard.[129]

In addition, the EPA notes that two areas in this group are located in the OTR. For these areas in particular, a nonattainment designation for the 1997 ozone NAAQS does not necessarily indicate current unsatisfactory air quality or unmet SIP requirements with respect to that standard. The CAA requires areas in the OTR, among other measures, to be subject to certain nonattainment requirements such as nonattainment NSR even if they are redesignated to attainment. Therefore, even when these areas are eligible for redesignation to attainment, states often elect not to submit a redesignation request for these areas and to undergo the redesignation process because they view the workload involved incommensurate with the benefits of redesignation. Under the EPA's proposal, all areas listed in Table 1 of

[127] We do not include in these two groups any areas that were redesignated to attainment for the 1997 ozone NAAQS prior to revocation of that NAAQS. In order to be redesignated for the 1997 ozone NAAQS, the area had to satisfy all applicable anti-backsliding requirements for the 1-hour ozone NAAQS. Any 1997 ozone NAAQS nonattainment area that was designated nonattainment for the 1-hour ozone NAAQS at time of revocation of the 1-hour NAAQS had to meet applicable 1-hour ozone NAAQS anti-backsliding requirements in order to be redesignated to attainment for the 1997 ozone NAAQS.

[128] The status of some areas listed in Table 1 with respect to the 1997 ozone NAAQS may change between today and the date that NAAQS is revoked.

[129] Depending on the area's classification for the 1997 ozone NAAQS and the SIP elements already approved, the area may still have outstanding 1997 anti-backsliding submission requirements that are not suspended by 51.918 (e.g., nonattainment NSR, Subpart 2 RACT requirements).

Appendix D will be subject to anti-backsliding requirements for the 1997 ozone NAAQS, unless they are redesignated to attainment for that standard prior to its revocation.

The EPA believes that Table 1 in Appendix D illustrates that many of the areas in this category will have already met the 1997 ozone NAAQS and will have been redesignated to attainment by the time it is revoked, and thus after revocation of that NAAQS, the number of areas with 1997 anti-backsliding requirements will be correspondingly reduced. For other areas which remain designated nonattainment for the 1997 ozone NAAQS, under the EPA's Clean Data Regulation, a determination of attainment suspends the obligation to submit certain attainment-related requirements. For those areas which have already incorporated measures into their approved SIPs that satisfy the nonattainment requirements for that standard, section 110(l) functions as an anti-backsliding check to require continued implementation of such measures unless revised in accordance with its provisions.

The EPA is also proposing that once the nonattainment NSR anti-backsliding requirement(s) for the 1997 ozone NAAQS cease to apply, since PSD will then be in effect the state may request that the corresponding NSR requirements be removed entirely, rather than be retained in the SIP as a maintenance plan contingency measure.[130]

c. 2008 Nonattainment Areas Also Designated Nonattainment for the 1-Hour and 1997 Ozone NAAQS

Table 2 in Appendix D lists the 18 areas that are currently designated nonattainment for all three ozone NAAQS—the 2008 ozone NAAQS, the 1997 ozone NAAQS and the already revoked 1-hour ozone NAAQS. More than half of these areas are located in either California (9) or Texas (2). The remaining 7 areas are located in the East. The EPA has already made final determinations that all 7 eastern areas (five large metropolitan areas and two smaller areas), have attained the 1-hour ozone NAAQS. A number of the eastern areas—including Washington, DC, Philadelphia and Boston—have met their attainment deadlines for both the 1-hour and 1997 ozone NAAQS, although they have not undergone the process to be redesignated to attainment for these NAAQS. The EPA proposes that, upon revocation of the 1997 ozone NAAQS, the areas listed in this group will be subject to applicable requirements, including nonattainment NSR, for the 1-hour and 1997 ozone NAAQS (to the extent those requirements have not been suspended by a Clean Data Determination), unless they have been redesignated to attainment for the 1997 ozone NAAQS prior to its revocation. Implementation of measures previously approved into a SIP for either the 1-hour ozone NAAQS or the 1997 ozone NAAQS must continue unless the SIP is revised in accordance with the anti-backsliding checks in CAA sections 110(l) and 193.

4. Summary

a. Areas Designated Attainment for the 2008 Ozone NAAQS

Areas designated attainment for the 2008 ozone NAAQS are meeting the current, most stringent ozone standard. Section 110(l) functions as an anti-backsliding provision to assure that the state may not revise any previously approved SIP provision without a showing that the revision will not interfere with attainment and maintenance or any other CAA requirements.

i. Attainment for the 2008 Ozone NAAQS and Maintenance for the 1997 Ozone NAAQS

Areas in this category (designated attainment for the 2008 ozone NAAQS and maintenance for the 1997 ozone NAAQS, as of revocation of the 1997 ozone NAAQS) have fulfilled all anti-backsliding requirements for prior standards through their section 175A maintenance plans, and are not obligated to meet further requirements with respect to those standards. The EPA proposes no further requirements for these areas, apart from the requirements in their approved SIPs. The areas' approved section 175A maintenance plans for the 1997 ozone NAAQS also satisfy their obligations for maintenance plans for the 2008 ozone NAAQS pursuant to section 110(a)(1).

ii. Attainment for the 2008 Ozone NAAQS and Nonattainment for the 1997 Ozone NAAQS

In the case of areas designated attainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS (as of revocation of the 1997 ozone NAAQS), a state[131] may, upon revocation of the 1997 ozone NAAQS, request that any requirements for nonattainment NSR included in the SIP for that revoked NAAQS be removed. In place of nonattainment NSR, these areas would be required to implement PSD requirements after the revocation of the 1997 ozone NAAQS. (As explained above, until the 1997 ozone NAAQS is revoked, nonattainment NSR applies.)

For these areas, the EPA is proposing to adopt as its preferred alternative that the SIP-approved PSD program that would apply to the area satisfies the maintenance plan obligation under CAA section 110(a)(1) for the 2008 ozone NAAQS; or as a less-preferred alternative, the EPA is proposing a requirement for an additional maintenance showing for the 2008 ozone NAAQS. (*See* proposed regulatory text 51.1105(a)(3).)

b. Areas Designated Nonattainment for the 2008 Ozone NAAQS

i. Areas Designated Nonattainment for the 2008 Ozone NAAQS and Maintenance for the 1997 Ozone NAAQS

The areas in this category are designated nonattainment for the 2008 ozone NAAQS and were (or will be) redesignated to attainment for the 1997 ozone NAAQS prior to its revocation. Thus, they are subject to section 175A maintenance plans for the 1997 ozone NAAQS. Having attained and been redesignated to attainment with a maintenance plan for the 1997 ozone NAAQS assures that the EPA has reviewed the area's approved maintenance SIP and has determined that it addresses all applicable anti-backsliding requirements for both the 1997 and 1-hour ozone NAAQS. The EPA believes that the approved SIP for these areas satisfies applicable anti-backsliding requirements. These areas are subject to nonattainment NSR and other nonattainment requirements for their classification under the 2008 ozone NAAQS.

The EPA wishes to solicit comments on ways to integrate requirements from existing NAAQS with those of new NAAQS so as to prevent their interaction from draining resources rather than protecting air quality. The EPA will consider suggestions for mitigating the cumulative effect of anti-backsliding requirements when they would frustrate, rather than further efforts to preserve and improve air quality. The EPA seeks ways to synthesize and reconcile anti-backsliding obligations with current planning and control efforts, so as to

[130] *See* 40 CFR 51.905(a)(3), the comparable provision for transitions from the 1-hour NAAQS to the 1997 ozone NAAQS, which allows states to request that the 1-hour nonattainment NSR provisions be removed from the SIP for such areas.

[131] This approach would not apply to areas located in the OTR and designated attainment, since the CAA requires these areas remain subject to Moderate nonattainment NSR requirements notwithstanding designation.

preserve scarce resources without sacrificing air quality protection.

ii. Areas Designated Nonattainment for the 2008 Ozone NAAQS and Also Nonattainment for a Prior Revoked Ozone NAAQS

The EPA is proposing that an area designated nonattainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS at the time of revocation of the 1997 ozone NAAQS will be obligated to implement the applicable requirements set forth in 51.1100(o) for the 1997 ozone NAAQS. If the area is also designated nonattainment for the 1-hour ozone NAAQS and subject to applicable requirements for that NAAQS at the time of revocation of the 1997 ozone NAAQS, the state must also continue addressing those applicable 1-hour ozone NAAQS requirements for that area. These areas must apply nonattainment NSR in accordance with their highest nonattainment classification under any ozone standard for which they are (or were at the time of revocation) designated nonattainment, as well as any section 185 requirements for areas classified Severe or Extreme at the time of revocation for a prior standard.

*J. Satisfaction of Anti-backsliding Requirements for an Area*

The EPA is proposing two acceptable procedures through which a state may demonstrate that it is no longer required to adopt any applicable requirements for an area which have not already been approved into the SIP for a revoked ozone NAAQS, through which it may remove nonattainment NSR provisions from the SIP and, upon a showing of consistency with the anti-backsliding checks in CAA sections 110(l) and 193 (if applicable), it may shift to the contingency measures portion of the SIP requirements which are already contained in the SIP.[132]

Procedure 1: Redesignation to Attainment for the 2008 Ozone NAAQS

The first of these procedures is formal redesignation of the area to attainment for the 2008 ozone NAAQS. This process is an extension of the approach EPA adopted in the Phase 1 Rule. Redesignation to attainment for the 2008 ozone NAAQS would allow a state to terminate and remove from its SIP for an area any nonattainment NSR requirements associated with its classifications under the 2008 ozone NAAQS, or under the 1997 or 1-hour ozone NAAQS, except for areas in the OTR as noted above. The area would instead apply PSD. We are proposing that once the area is redesignated and the requirement(s) for nonattainment NSR for the 2008 ozone NAAQS and for any prior ozone NAAQS cease to apply, the state may request that the corresponding NSR requirements be removed from the SIP rather than be retained as a maintenance plan contingency measure. This approach is consistent with the EPA's longstanding interpretation of NSR requirements for areas that are redesignated to attainment.[133] Redesignation to attainment would also terminate any section 185 obligations applicable to a Severe or Extreme Area for the 2008 or prior revoked 1997 or 1-hour ozone NAAQS pursuant to the express terms of CAA section 185.

For areas subject to anti-backsliding requirements for revoked standards, approval of redesignation to attainment for the 2008 ozone NAAQS signifies that the state has satisfied its obligations to adopt anti-backsliding requirements for the revoked standards. This same approach was used in the Phase 1 Rule in requiring redesignations for the 1997 ozone NAAQS to address anti-backsliding requirements for the revoked 1-hour standard. Approval of the section 175A maintenance plan for the 2008 ozone NAAQS assures that the area's SIP includes the provisions necessary for maintenance of the 2008 ozone NAAQS, which is the most stringent of the NAAQS. Therefore, upon redesignation to attainment and approval of its plan for maintenance of the 2008 ozone NAAQS, an area has satisfied its obligations to adopt anti-backsliding requirements. All of the anti-backsliding measures that have been approved into the SIP must continue to be implemented unless or until the state can show that such implementation is not necessary for maintenance, consistent with section 110(l) and section 193 if applicable. This showing may be submitted to the EPA at the same time as the maintenance plan, and may be approved by the EPA in a single action. Subject to this process, anti-backsliding requirements contained in the SIP could be shifted to the contingency measures portion of a section 175A maintenance plan, or, in limited circumstances[134] removed from the SIP.

Procedure 2: Providing a Redesignation Substitute for Revoked NAAQS

In addition to the redesignation of an area to attainment for the 2008 ozone NAAQS, the EPA is proposing a new separate route for satisfying anti-backsliding requirements for a revoked 1997 or 1-hour ozone NAAQS. The EPA's experience in implementing the anti-backsliding requirements in the Phase 1 Rule has taught that the EPA should provide an additional mechanism to allow for satisfaction of anti-backsliding requirements for a revoked standard.

Under the Phase 1 Rule, the EPA lacked a rule-based method that, like redesignation to attainment for a current standard, could serve as a demonstration that applicable nonattainment requirements for a revoked standard have been satisfied. Because the EPA can no longer formally redesignate areas to attainment for a standard after that standard is revoked, the only relief the Phase 1 Rule provided to areas subject to outdated anti-backsliding requirements for the revoked 1-hour ozone NAAQS was redesignation to attainment for the 1997 ozone NAAQS that replaced it. The lack of another avenue of relief created hardship and confusion, particularly with respect to terminating 1-hour ozone nonattainment NSR and section 185 program fee requirements.

As we confront the issue again, this time for areas which, in some cases, are subject to anti-backsliding requirements for two revoked ozone standards, the EPA now recognizes the need to create an alternative other than formal redesignation to attainment for the 2008 ozone NAAQS. Unless we provide a second mechanism, after revocation of the 1997 ozone NAAQS, areas that attain and meet requirements for the revoked 1997 or 1-hour ozone NAAQS will be treated more harshly than areas that were redesignated to attainment for those standards prior to their revocation. Areas that would otherwise have qualified for redesignation to attainment for the 1997 or 1-hour ozone NAAQS, were it not for their revocation, would have to wait to be relieved of outdated requirements until they also qualify for redesignation to attainment for the more stringent 2008 ozone NAAQS. The EPA believes that, under any view of anti-backsliding for a revoked standard, it should not mean

[132] Nonattainment NSR is not required to be retained in the SIP as a contingency measure. This is because for attainment areas, PSD replaces nonattainment NSR.

[133] *See* 40 CFR 51.905(a)(3), the comparable provision for transition from the 1-hour NAAQS to the 1997 ozone NAAQS, which allows such areas to request that the 1-hour nonattainment NSR provisions be removed from the SIP.

[134] As explained in the text above, nonattainment NSR requirements can be removed from the SIP entirely.

imposing more onerous terms than those that would apply if the standard had not been revoked.

Therefore, in addition to formal redesignation to attainment for the 2008 ozone NAAQS, the EPA is proposing a separate mechanism for satisfaction of anti-backsliding requirements for a revoked 1997 or 1-hour ozone NAAQS. Because the EPA can no longer formally redesignate areas for a revoked standard, under this option, areas would be eligible to qualify for satisfaction of applicable requirements for the revoked 1-hour or 1997 ozone NAAQS by submitting a showing that functions as a substitute for redesignation to attainment for that revoked standard, and insures that the substance of the redesignation requirements are met. For a revoked standard, this second mechanism would serve as a successor to redesignation to attainment, for which the area would have been eligible were it not for revocation. *See,* for example, CAA section 185, which states that the obligation to implement a fee program terminates when ''the area is redesignated as an attainment area for ozone.'' Thus, redesignation to attainment for the 1-hour ozone NAAQS if it were still possible would have clearly relieved the area of this obligation with respect to that standard.

For an area to show that it qualifies for this redesignation substitute, the EPA proposes that the state provide a showing that addresses the substance of the redesignation criteria. After notice-and-comment rulemaking on this showing, the EPA approval of the showing would have the same effect on the area's nonattainment anti-backsliding obligations as would a redesignation to attainment for the revoked standard.

The EPA proposes that the showing, based on the CAA's criteria for redesignation to attainment (CAA section 107(d)(3)(E)), would include: Attainment of the relevant revoked 1-hour or 1997 ozone NAAQS; a showing that attainment was due to permanent and enforceable emissions reductions; and a demonstration that the area can continue to maintain the standard over the next 10 years. Redesignation criteria in section 107(d)(3)(E)(ii) and (v) would be met by the existing approved SIP, under which the area has attained the revoked standard, in the context of (and reinforced by) the requirements for the new 2008 ozone NAAQS. We believe that, for a revoked standard, this approach results in a notice-and-comment process that fulfills the function of redesignation to attainment for the purpose of satisfying requirements for anti-backsliding requirements for a revoked standard. *See* CAA sections 107(d)(3)(E) and 175A. While we do not propose to require formal SIP submission procedures, since areas will not actually be redesignated under this option, the EPA will conduct notice-and-comment rulemaking on the state's showings. The EPA believes that requiring more elaborate administrative procedures would needlessly impose burdens on the area, which will remain subject to all the formal requirements for redesignation to attainment for the 2008 ozone NAAQS. Development of these SIP revisions takes time, and can impose costs to both industry and the public. Under these circumstances, it is consistent with the requirements of anti-backsliding for areas under pressure from multiple environmental obligations to be relieved of procedural burdens once the area has attained the revoked standard. As in the case of a redesignation to attainment for the 2008 ozone NAAQS, at the time of submitting a redesignation substitute or at any time thereafter, a state may request to revise its SIP so as to cease implementing a specific nonattainment SIP requirement. However, this request could not be granted, and the SIP revised, until the EPA approves the redesignation substitute and a demonstration that the SIP revision meets the requirements of section 110(l). The EPA is not providing this mechanism for the purpose of allowing areas to avoid requirements needed for attainment and maintenance of the NAAQS. The showings required, the provisions of section 110(l), and the fact that the area remains subject to the more stringent 2008 ozone NAAQS, assure that is not the case. It is, however, important to relieve areas of requirements that are no longer necessary, or that can be replaced by other forms of protection that might better meet local needs and circumstances.

The EPA notes that this proposed option, a redesignation substitute procedure for the revoked 1-hour or 1997 ozone NAAQS, is more stringent than an option previously adopted in the EPA's Phase 1 Rule (69 FR 23982). It requires a more extensive showing than mere attainment of the revoked standard. We also note that section 172(e) does not address when anti-backsliding requirements can be removed. Nor does the *South Coast* decision clearly answer this question. Here, the EPA is proposing a mechanism that demands more than a determination of attainment of the prior standard, and calls for a showing that addresses redesignation criteria for that standard. Moreover the process under this option occurs while the area remains subject to ongoing requirements to meet the new more stringent standard. In this context, the proposed option is clearly sufficient for its limited anti-backsliding purpose: It recognizes and supports the area's progress in having attained the prior standard due to permanent and enforceable emissions reductions, and reinforces continued attainment by calling for a demonstration that the area can maintain the revoked standard.

Under both of the EPA's proposed procedures, a state seeking to revise its SIP to remove anti-backsliding measures from the active portion of its SIP must demonstrate, pursuant to section 110(l), that such revision would not interfere with attainment or maintenance of any applicable NAAQS, or any other requirement of the CAA.[135]

The EPA seeks comments on its proposed approaches for the final rule. Additionally, as mentioned in section IV.H.1 above, the EPA is soliciting comments on additional routes to lifting nonattainment NSR requirements tied to the revoked 1997 and 1-hour ozone NAAQS, where the 2008 nonattainment NSR requirements would remain in place. These additional processes, like the redesignation substitute option the EPA is proposing, would operate to lift the nonattainment NSR requirements for the revoked NAAQS while retaining the NSR Requirements for the 2008 ozone NAAQS. The EPA asks that commenters provide supporting legal rationales for any additional option, taking into account the D.C. Circuit's decision in *South Coast.*

### *K. How will the EPA's determination of attainment (''Clean Data'') regulation apply for purposes of the anti-backsliding requirements?*

The EPA, in its Phase 1 Rule, codified its long-standing interpretation under the Clean Data Policy in a regulation. Under 40 CFR 51.918, an EPA determination that an area is attaining the 1997 ozone NAAQS suspends the obligation to submit any attainment-related SIP elements for the 1997 ozone NAAQS not yet approved in the SIP, for so long as the area continues in attainment of that NAAQS.[136] The EPA

[135] Likewise to the extent a SIP revision seeking to remove anti-backsliding measures modifies control requirements subject to section 193, the revision would also have to satisfy the requirements of that provision.

[136] The EPA initially issued the Clean Data Policy in 1995, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard.''

Continued

in this rulemaking is proposing to apply this same approach with respect to determinations of attainment for the 2008 ozone NAAQS. Moreover, in order to reflect the intended ongoing status of the Clean Data Policy and to consolidate in one regulation a comprehensive provision applicable to determinations of attainment for the current and former ozone NAAQS, the EPA proposes, after revocation of the 1997 ozone NAAQS, to replace 40 CFR 51.918 with proposed 40 CFR 51.1118. Section 51.1118 applies essentially the same language as 51.918. Upon revocation of the 1997 ozone NAAQS, this section would be applicable to determinations of attainment for all ozone NAAQS: the 2008, 1997 and the already revoked 1-hour ozone NAAQS. If section 51.1118 is finalized, the EPA's long-standing Clean Data Policy, which has been upheld by the D.C. Circuit and all other courts that have considered it, will be embodied in a regulation applicable, after revocation of the 1997 ozone NAAQS, for the purpose of all existing and prior ozone NAAQS. The planning elements that are suspended under section 51.1118 would be the same as those suspended under existing section 51.918: RFP requirements, attainment demonstrations, RACM, contingency measures and other state planning requirements related to attainment of the relevant standard. For a Severe or Extreme area, a section 185 fee program is by its express terms linked to an attainment demonstration; therefore suspension of the obligation to submit the attainment demonstration also suspends the obligation to submit the fee program which is part of the attainment demonstration (provided that the EPA has not already determined that the area failed to attain by its attainment deadline). The EPA notes that a determination of attainment would not, however, suspend obligations to submit NSR, subpart 2 RACT or emission inventories under section 182(a)(1).

### *L. What is the relationship between implementation of the 2008 ozone NAAQS and the CAA title V permits program?*

We are proposing, and soliciting comment on, two alternative approaches for implementing the title V permit program for sources in areas designated nonattainment for the 2008 ozone NAAQS and subject to anti-backsliding requirements for a prior ozone NAAQS.

One of the ways a source can become subject to title V is as a ''major source.'' *See* CAA section 502(a); 40 CFR 70.3; 71.3. Furthermore, the definition of ''major source'' for purposes of title V includes, but is not limited to, a ''major stationary source as defined . . . in part D'' of title I.[137] *See* CAA section 501(2)(B); 40 CFR 70.2; 71.2. Thus, changes in an area's classification (e.g., from ''Serious'' to ''Severe'') by changing the emissions threshold for being deemed a major source (e.g., from 100 tpy to 50 tpy of a relevant pollutant) can result in changes in title V applicability for a source.[138]

Between the effective date of area classifications for the 2008 ozone NAAQS and the revocation date of the 1997 ozone NAAQS, the major source thresholds for both the 1997 ozone NAAQS classifications *and* the 2008 ozone NAAQS classifications are in effect under part D of title I,[139] and therefore under title V as well. However, after revocation of the 1997 ozone NAAQS and the corresponding area classifications for that NAAQS, the question arises as to whether only the major source thresholds for the 2008 ozone NAAQS designations and classifications are relevant for determining whether a source is major for ozone precursors for purposes of title V.

As discussed below, the EPA is co-proposing and soliciting comments on the following two alternative approaches for determining whether a source is a ''major stationary source as defined in . . . part D'' for purposes of title V after the revocation of the 1997 ozone NAAQS: (1) The major source threshold for title V in an area is the same as the major source threshold for purposes of requirements such as NSR and RACT (i.e., the major source threshold associated with the area's classification for the 1997 and/or 1-hour ozone NAAQS may be the applicable threshold for title V purposes, to the extent that anti-backsliding requirements for the 1997 and/or 1-hour ozone NAAQS apply in the area); and (2) the major source threshold for title V in the area depends solely on the area's classification for the 2008 ozone NAAQS.

In the Phase 2 Rule for implementing the 1997 ozone NAAQS, the EPA discussed, in response to comments, its approach to implementing title V during the transition to implementation of the 1997 ozone NAAQS. *See* 70 FR 71689–71691. Specifically, the EPA recognized that the Phase 1 Implementation Rule retained the major source applicability cut-offs associated with the prior 1-hour ozone NAAQS for purposes of RACT as an anti-backsliding requirement. In other words, an area classified as Moderate for the 1997 ozone NAAQS, but Serious for the 1-hour ozone NAAQS, would be treated as a Serious area and required to apply major source RACT to sources above the major source threshold for Serious areas (i.e., 50 tpy or more of VOC or $NO_X$). In the Phase 2 Rule, the EPA concluded that the anti-backsliding provisions of the Phase 1 Implementation Rule were not relevant to the definition of major source for purposes of title V. The EPA suggested the anti-backsliding provisions could not change the major source thresholds for title V, as those are defined in the statute. *See* 70 FR 71690.

Following the EPA's promulgation of the Phase 2 Rule, the U.S. Court of Appeals for the D.C. Circuit issued its ruling on challenges to the Phase 1 Rule, which had established which requirements for the 1-hour ozone NAAQS would be retained as anti-backsliding requirements, and found that EPA erred in its approach to anti-backsliding by not requiring states to retain, as applicable requirements, all control measures that applied for the 1-hour ozone NAAQS. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). Accordingly, today's proposal not only includes RACT as an anti-backsliding measure, with the major source thresholds that applied to areas under the 1997 ozone NAAQS or 1-hour ozone NAAQS (i.e., where such thresholds are more restrictive than the thresholds

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Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995. For purposes of the 1997 ozone NAAQS, we codified that policy at 40 CFR 51.918. This codified policy was upheld by the D.C. Circuit in *NRDC* v. *EPA* 571 F.3d 1245 (DC 2009).

[137] The EPA notes that sources can become subject to title V permitting for other reasons, and nothing in this discussion is intended to suggest that changes in an area's classification would affect those other provisions of title V. Accordingly, sources subject to title V under other provisions would remain subject to title V for those independent reasons.

[138] It should be noted that, pursuant to CAA section 503(a), a source is subject to a permit program on the later of the date that it becomes a major source and the effective date of a permit program applicable to the source. Thus, if a permitting authority with an approved title V program lacks any authority to permit certain sources that are major sources subject to title V as a result of ozone precursor emissions and an area classification for ozone that has a major source threshold lower than 100 tpy (e.g., ''Serious'') then there is no title V permit program ''applicable to the source'' and those sources have no obligation to apply for a title V permit until after such time as a permit program becomes applicable to them. The EPA will work with States to ensure that all approved title V programs are adequate under the CAA.

[139] It should be noted that the major source threshold associated with an area's 1-hour ozone NAAQS classification may be the applicable threshold for at least some purposes where anti-backsliding requirements for the 1-hour ozone NAAQS apply in the area.

applicable to areas under their classifications for the 2008 NAAQS), but also includes the requirement for these areas to continue to implement NSR using the major source thresholds that applied under the 1997 ozone NAAQS or the 1-hour ozone NAAQS, where those thresholds are more restrictive than the threshold applicable to an area under its classification for the 2008 NAAQS. In light of the D.C. Circuit's decision in *South Coast,* and the current approach of this proposed rule to retain as anti-backsliding requirements the RACT and NSR obligations, including the major source applicability thresholds associated with prior NAAQS, the EPA solicits comment on appropriate approaches to title V applicability during the transition to the 2008 ozone NAAQS. In summary, EPA is co-proposing two approaches to interpreting title V applicability requirements following revocation of the 1997 ozone NAAQS: (1) Major source thresholds for title V should be the same as the major source thresholds applicable for purposes of other requirements such as RACT and NSR; and (2) major source thresholds for title V depend solely on the area's classification for the 2008 ozone NAAQS.

In particular, the EPA solicits comments on whether title V should (or should not) be considered a''control,'' within the meaning of section 172(e) in light of the fact that title V generally does not impose new substantive air quality control requirements but is intended to assure compliance with all such existing requirements. The EPA also solicits comments on the consistency of the two proposed approaches with the language and purposes of the Act, in light of the major source thresholds under the revoked standard being retained for requirements such as RACT and NSR. The EPA generally solicits comment on other legal or policy issues relevant to these two approaches.

Because the EPA would benefit from public comment on these issues, the EPA is co-proposing these two approaches and, following review of public comments on the issues raised by each approach, intends to adopt one of the approaches in the final rule. As part of the proposal to retain major source applicability thresholds for the 1997 and/or 1-hour classifications, the EPA is also proposing to make minor conforming amendments to the definition of ''major source'' in 40 CFR 70.2 and 71.2 by inserting after each occurrence of the word ''classified'' in paragraph (3) the phrase ''or treated as classified'' in order to make clear that sources subject to major source thresholds pursuant to a revoked standard for controls are also subject to the same major source thresholds for purposes of title V. The EPA further solicits comments on the proposed conforming amendments, and on whether additional changes, different changes, or no changes to parts 70 and 71, and to approved state title V programs, would be necessary, if the EPA concluded that the thresholds under the 1997 and/or 1-hour classifications should be retained for purposes of title V.

## V. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned the EPA ICR number 2347.01.

The EPA is proposing this 2008 ozone NAAQS SIP Requirements Rule so that states will know what CAA requirements apply to their nonattainment areas when the states develop their SIPs for attaining and maintaining the NAAQS. The intended effect of the SIP Requirements Rule—in conjunction with the rule on other aspects of implementation—is to provide certainty to states regarding their planning obligations such that states may begin SIP development. For purposes of analysis of the estimated paperwork burden, the EPA assumed 46 [140] non-attainment areas, some of which must prepare an attainment demonstration as well as submit an RFP and RACT SIP. The attainment demonstration requirement would appear as 40 CFR 51.908 which implements CAA subsections 172(c)(1), 182(b)(1)(A) and 182(c)(2)(B). The RFP SIP submission requirement would appear in 40 CFR 51.910, and the RACT SIP submission requirement would appear in 40 CFR 51.912, which implements CAA subsections 172(c)(1) 182(b)(2),(c),(d) and (e).

States should already have information from emission sources, as facilities should have provided this information to meet 1-hour and 1997 ozone NAAQS SIP requirements, operating permits and/or emissions reporting requirements. Such information does not generally reveal the details of production processes. But, to the extent it may, confidential business information for the affected facilities is protected. Specifically, submissions of emissions and control efficiency information that is confidential, proprietary and trade secret is protected from disclosure under the requirements of subsections 503(e) and 114(c) of the CAA.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to be a total of 120,000 labor hours per year at an annual labor cost of $2.4 million (present value) over the 3-year period or approximately $91,000 per state for the 26 state respondents, including the District of Columbia. The average annual reporting burden is 690 hours per response, with approximately 2 responses per state for 58 state respondents. There are no capital or operating and maintenance costs associated with the proposed rule requirements. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2010–0885. Commenters should submit any comments related to the ICR to both the EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 6, 2013, a comment to OMB is best assured of having its full effect if OMB receives it by July 8, 2013. The final rule will respond to any OMB or public

[140] 77 FR 30088, May 21, 2012.

comments on the information collection requirements contained in this proposal.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201;) (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements directly on small entities. Entities potentially affected directly by this proposal include state, local and tribal governments and none of these governments are small governments. Other types of small entities are not directly subject to the requirements of this rule because this action only addresses whether a SIP will provide for adequate attainment and maintenance of the NAAQS and meet the obligations of the CAA.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

This action contains no federal mandate under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local and tribal governments, in the aggregate, or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The CAA imposes the obligation for states to submit SIPs to implement the 2008 ozone NAAQS; in this rule, the EPA is merely explaining those requirements.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirement to submit SIP revisions to meet a revised ozone standard is imposed by the CAA. This proposed rule, if made final, would interpret those requirements as they apply to the 2008 ozone NAAQS . Thus, Executive Order 13132 does not apply to these proposed regulation revisions.

In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, EPA specifically solicits comments on this proposed action from state and local officials. In addition, the EPA intends to meet with organizations representing state and local officials during the comment period for this action.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have a substantial direct effect on one or more Indian tribes, since no tribe has to develop a SIP under these proposed regulatory revisions. Furthermore, these proposed regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA met with tribal officials in developing this action. Meeting summaries are contained in the docket for this rulemaking.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. These proposed revisions address whether a SIP will be adequate to attain and maintain the NAAQS and will meet the obligations of the CAA. The NAAQS are promulgated to protect the health and welfare of sensitive population, including children.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs

federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed revisions to the regulations would, if promulgated, revise the substantive requirements for SIPs to attain the NAAQS, which are designed to protect all segments of the general populations. As such, they do not adversely affect the health or safety of minority or low-income populations and are designed to protect and enhance the health and safety of these and other populations.

*K. Determination Under Section 307(d)*

Pursuant to sections 307(d)(1)(E) and 307(d)(1)(V) of the CAA, the Administrator proposes to determine that this action is subject to the provisions of section 307(d). Under section 307(d)(1)(V), the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.''

## Appendix A to Preamble

**Glossary of Terms and Acronyms**

ACT Alternative Control Techniques (document)
AERR Air Emissions Reporting Requirements Rule
BACT Best Available Control Technology
CAA Clean Air Act
CAAAC Clean Air Act Advisory Committee
CAIR Clean Air Interstate Rule
CERR Consolidated Emissions Reporting Rule
CFR Code of Federal Regulations
CO Carbon Monoxide
CSAPR Cross-State Air Pollution Rule
CTG Control Technique Guideline
DOT Department of Transportation
DV Design Value
EMFAC EMissions FACtors (a mobile emissions model)
ESRP Emissions Statement Reporting Program
EGU Electricity Generating Unit
EO Executive Order
EPA Environmental Protection Agency
FIP Federal Implementation Plan
GDF Gasoline dispensing facilities
HEDD High Electric Demand Day
ICR Information Collection Requirement
I/M Inspection and Maintenance (i.e., smog check)
km Kilometers
LAER Lowest Achievable Emission Rate
MACT Maximum Achievable Control Technology
MCR Mid-course Review
MPO Metropolitan Planning Organization
NAAQS National Ambient Air Quality Standards
$NO_X$ Nitrogen Oxides
NPRM Notice of Proposed Rulemaking
NSR New Source Review
NTTAA National Technology Transfer and Advancement Act of 1995
OMB Office of Management and Budget
OTR Ozone Transport Region
ORVR Onboard refueling vapor recovery
PM Particulate Matter
$PM_{2.5}$ Fine Particulate Matter
ppb Parts per Billion
ppm Parts per Million
PSD Prevention of Significant Deterioration
RACM Reasonably Available Control Measures
RACT Reasonably Available Control Technology
RFA Regulatory Flexibility Act
RFG Reformulated Gasoline
RFP Reasonable Further Progress
ROP Rate of Progress
RPO Regional Planning Organization
SBA Small Business Administration
SIP State Implementation Plan
TAR Tribal Authority Rule
TAS Treatment in the Same Manner as a State (''Treatment as State'')
TIP Tribal Implementation Plan; also Transportation Improvement Program (depending on context)
tpd Tons Per Day
tpy Tons Per Year
TSP Total Suspended Particulate
UMRA Unfunded Mandates Reform Act of 1995
VCS Voluntary Consensus Standards
VOC Volatile Organic Compound

## Appendix B to Preamble Relevant Rulemakings Concerning Implementation of the 1997 Ozone NAAQS and Anti-Backsliding Provisions for Revoked 1-Hour Ozone NAAQS

[MR—Major Rulemaking; RE—Reconsideration; CO—Correction; OT—Other]

| FR Citation | Date | Title (kind of rule) | Action | Topic |
|---|---|---|---|---|
| 68 FR 32802 | 06/02/2003 | Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (MR). | Proposed Rulemaking | |
| 68 FR 46536 | 08/06/2003 | Draft Regulatory Text for Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (OT). | Notice of Availability | Draft regulatory text. |
| 68 FR 60054 | 10/21/2003 | Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards (OT). | Reopening of public comment period. | Classification system. |
| 69 FR 23858 | 04/30/2004 | Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas With Deferred Effective Dates (MR). | Final Rule | |
| 69 FR 23951 | 04/30/2004 | Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards—Phase 1 (MR). | Final Rule | Classification; Revocation of 1-hour std, anti-backsliding. |
| 69 FR 35526 | 06/25/2004 | Revision to the Preamble of the Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standards—Phase 1; Correction (CO). | Final rule; correction | Filing of petitions for review. |

APPENDIX B TO PREAMBLE RELEVANT RULEMAKINGS CONCERNING IMPLEMENTATION OF THE 1997 OZONE NAAQS AND ANTI-BACKSLIDING PROVISIONS FOR REVOKED 1-HOUR OZONE NAAQS—Continued

[MR—Major Rulemaking; RE—Reconsideration; CO—Correction; OT—Other]

| FR Citation | Date | Title (kind of rule) | Action | Topic |
|---|---|---|---|---|
| 70 FR 5593 | 02/03/2005 | Implementation of the 8-Hour Ozone National Ambient Air Quality Standards—Phase 1: Reconsideration (RE). | Proposed rule; notice of public hearing. | Waiver from anti-backsliding of 1-hour ozone Sec. 185 penalty fees and contingency measures; listing of 1-hour attainment demos as applicable requirement. |
| 70 FR 17018 | 04/04/2005 | Nonattainment Major New Source Review Implementation Under 8-Hour Ozone National Ambient Air Quality Standards: Reconsideration (RE). | Proposed rule; notice of public hearing. | NSR under 8-hour NAAQS. |
| 70 FR 30592 | 05/26/2005 | Implementation of the 8-Hour Ozone National Ambient Air Quality Standards—Phase 1: Reconsideration (RE). | Final rule | Waiver from Anti-backsliding of 1-hour ozone Sec. 185 penalty fees and contingency measures; listing of 1-hour attainment demos as applicable requirement. |
| 70 FR 39413 | 07/08/2005 | Nonattainment Major New Source Review Implementation Under 8-Hour Ozone National Ambient Air Quality Standards: Reconsideration (RE). | Final rule; notice of final action on reconsideration. | NSR under 8-hour NAAQS. |
| 70 FR 44470 | 08/03/2005 | Identification of Ozone Areas for Which the 1-Hour Standard Has Been Revoked and Technical Correction to Phase 1 Rule (RE). | Final Rule | Part 81 change to reflect revocation of 1-hour standard; correction to 40 CFR 51.905(c). |
| 70 FR 71612 | 11/29/2005 | Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standards—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline (MR). | Final Rule | All other 8-hour ozone SIP requirements, including attainment demo, RFP, RACT/RACM. |
| 71 FR 15098 | 03/27/2006 | Implementation of the 8-Hour Ozone National Ambient Air Quality Standards—Phase 1: Reconsideration (RE). | Proposed rule; notice of public hearing; reopening comment period. | Overwhelming transport classification. |
| 71 FR 58498 | 10/04/2006 | Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standards—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline; Correction (CO). | Final rule; correction .. | Corrections to methods for calculating RFP targets. |
| 71 FR 75902 | 12/19/2006 | Phase 2 of the Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standards—Notice of Reconsideration (RE). | Proposed Rule | CAIR/RACT issue & two NSR issues. |
| 72 FR 31727 | 06/08/2007 | Phase 2 of the Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standards—Notice of Reconsideration (RE). | Final notice of reconsideration. | CAIR/RACT issue & two NSR issues. |
| 73 FR 42294 | 07/21/2008 | Proposed Rule to Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: Addressing a Portion of the Phase 2 Ozone Implementation Rule Concerning Reasonable Further Progress Emissions Reduction Credits Outside Ozone Nonattainment Areas (OT). | Proposed Rule | Phase 2 rule addressing partial vacatur on RFP Credit from outside nonattainment area. |

APPENDIX B TO PREAMBLE RELEVANT RULEMAKINGS CONCERNING IMPLEMENTATION OF THE 1997 OZONE NAAQS AND ANTI-BACKSLIDING PROVISIONS FOR REVOKED 1-HOUR OZONE NAAQS—Continued

[MR—Major Rulemaking; RE—Reconsideration; CO—Correction; OT—Other]

| FR Citation | Date | Title (kind of rule) | Action | Topic |
|---|---|---|---|---|
| 74 FR 2936 | 01/16/2009 | Proposed Rule To Implement the 1997 8-Hour Ozone National Ambient Air Quality Standards: Revision of Subpart 1 Area Reclassification and Anti-backsliding Provisions Under Former 1-Hour Ozone Standard; Proposed Deletion of Obsolete 1-Hour Ozone Standard Provision. | Proposed Rule | Phase 1 Rule—response to vacatur—Subpart 1 areas, 1-hour contingency measures, rule text revision on 1-hour Anti-backsliding exemptions. |
| 74 FR 34525 | 07/16/2009 | Ambient Ozone Monitoring Regulations: Revisions to Network Design Requirements. | Proposed Rule | Proposing to modify monitoring requirements and extend the length of the required ozone monitoring season in some states. |
| 74 FR 40074 | 08/11/2009 | Implementation of the 1997 8-Hour Ozone National Ambient Air Quality Standard: Addressing a Portion of the Phase 2 Ozone Implementation Rule Concerning Reasonable Further Progress Emissions Reduction Credits Outside Ozone Nonattainment Areas. | Final Rule | Phase 2 rule addressing partial vacatur on RFP Credit from outside nonattainment area. |
| 75 FR 51960 | 08/24/2010 | Proposed Rule To Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: New Source Review Anti-Backsliding Provisions for Former 1-Hour Ozone Standard. | Proposed Rule | Proposing to address New Source Review anti-backsliding requirements for the revoked 1-hour ozone NAAQS. |
| 75 FR 80420 | 12/22/2010 | Reasonable Further Progress Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards. | Proposed Rule | Proposing to revise the agency's earlier interpretation of its rule that allowed emissions reductions from outside the nonattainment area to be credited toward meeting the RFP requirements inside the area. |
| 76 FR 41731 | 07/15/2011 | Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver. | Proposed Rule | Proposing: 1) criteria for determining whether onboard refueling vapor recovery (ORVR) is in widespread use; 2) to determine the date at which widespread use of ORVR will occur. |

## Appendix C to Preamble Methods To Account for Non-Creditable Reductions When Calculating RFP Targets for the 2008 Ozone NAAQS

The following methods properly account for the non-creditable emissions reductions when calculating RFP targets.[1] They are consistent with requirements of sections 182(b)(1)(C) and (D) and 182(c)(2)(B) of the CAA.[2]

(1) Method 1 applies to areas (or portions thereof) that must meet a 15 percent VOC reduction requirement without $NO_X$ substitution:

(A) Estimate the actual anthropogenic baseline year VOC inventory for the baseline year with all control programs that were in the baseline year.

[1] These methods assume the use of EPA's on-road motor vehicle emissions model in all states other than California. All of the methods given here require the user to turn off all post-1990 CAA measures as part of the calculation. In EPA's current motor vehicle emissions model, MOVES, this is accomplished by selecting ''Rate of Progress'' in the ''Strategies'' section of the MOVES Navigation Panel. This is described in the MOVES2010 User's Guide and in the MOVES Technical Guidance (both found at *www.epa.gov/otaq/models/moves/index.htm*). Users of future versions of EPA's motor vehicle emissions model should consult the appropriate User's Guide for the version of the model they are using for instructions on what model command to use. For California nonattainment areas, the current motor vehicle emissions model is EMFAC2007. Users modeling California nonattainment areas should consult with the EPA regional office for information on doing equivalent calculations in that model and in future versions.

[2] These sections of the Clean Air Act list four types of measures that are not creditable in these calculations: motor vehicle exhaust or evaporative standards promulgated by January 1, 1990; certain fuel RVP requirements that were implemented in 1992; certain corrections to RACT provisions in SIPs; and certain corrections to I/M programs. The latter two corrections occurred shortly after 1990 and no longer need to be accounted for. The methods described in this appendix address the first two types of non-creditable reductions.

(B) Using the same highway vehicle activity inputs used to calculate the actual baseline year inventory, run the appropriate motor vehicle emissions model for the baseline year and the 15 percent milestone year (i.e., the sixth year following the baseline year) with all post-1990 CAA measures turned off. Any other local inputs for vehicle inspection and maintenance (I/M) programs should be set according to the program that was required to be in place in 1990. Fuel vapor pressure (RVP) should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of the RVP regulations promulgated in June 1990.

(C) Calculate the difference between the baseline and 15 percent milestone year VOC emission factors calculated in Step B and multiply by vehicle miles traveled (VMT) for the baseline year. The result is the VOC emissions reduction that will occur between the baseline year and the 15 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable reduction that will occur over this period.

(D) Subtract the non-creditable reduction calculated in Step C from the actual anthropogenic baseline inventory estimated in Step A. This adjusted VOC inventory is the basis for calculating the target level of actual emissions in the 15 percent milestone year.

(E) Reduce the adjusted VOC inventory calculated in Step D by 15 percent. The result is the level of VOC emissions in the 15 percent milestone year necessary to meet the 15 percent VOC reduction requirement. The actual projected 15 percent milestone year inventory for all sources with all control measures in place in the milestone year and including projected growth in activity through the 15 percent milestone year must be at or lower than this target level of emissions.

(2) Method 2 applies to areas initially classified as Moderate for the 2008 ozone NAAQS and portions thereof and for areas or those portions thereof that had already met the 15 percent RFP requirement for VOC in section 182(b)(1) of the CAA for the 1-hour ozone NAAQS or the 1997 ozone NAAQS, or, that met this 15 percent RFP requirement based upon a combination of SIPs for both the 1-hour ozone NAAQS and the 1997 ozone NAAQS. These areas or the portions thereof are covered by subpart 1 RFP requirements and must meet a 15 percent VOC emission reduction requirement by the 15 percent milestone year but with $NO_X$ substitution allowed, following EPA's $NO_X$ Substitution Guidance [3]:

(A) Estimate the actual anthropogenic baseline year inventory for both VOC and $NO_X$ with all control programs in place in the baseline year.

(B) Using the same highway vehicle activity inputs used to calculate the baseline year inventory, run the appropriate motor vehicle emissions model for the baseline year and the 15 percent milestone year with all post-1990 CAA measures turned off. Any other local inputs for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of RVP regulations promulgated in June 1990.

(C) Calculate the difference between the baseline and 15 percent milestone years VOC emissions factors calculated in Step B and multiply by the baseline year VMT. The result is the VOC emissions reduction that will occur between the baseline year and the 15 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable VOC reduction that will occur over this period. Calculate the difference between the baseline year and the 15 percent milestone year $NO_X$ emissions factors calculated in Step B and multiply by the baseline year VMT. This result is the $NO_X$ emissions reduction that will occur between the baseline year and the 15 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable $NO_X$ reduction that will occur over this period.

(D) Subtract the non-creditable VOC reduction calculated in Step C from the actual anthropogenic baseline year VOC inventory estimated in Step A. Subtract the non-creditable $NO_X$ reduction calculated in Step C from the actual anthropogenic baseline year $NO_X$ inventory estimated in Step A. These adjusted VOC and $NO_X$ inventories are the basis for calculating the target level of emissions in the 15 percent milestone year.

(E) The target for VOC and $NO_X$ emissions in the 15 percent milestone year needed to meet the 15 percent milestone year RFP requirement is any combination of VOC and $NO_X$ emissions which result in a combined total of 15 percent reductions when compared to the adjusted VOC and $NO_X$ inventories calculated in Step D. For example, the target level of VOC emissions in the 15 percent milestone year could be 90 percent of the adjusted VOC inventory calculated in Step D, which would be a 10 percent reduction, and similarly the target level of $NO_X$ emissions could be 95 percent of the adjusted VOC inventory calculated in Step D, which would be a 5 percent reduction. The actual projected 15 percent milestone year VOC and $NO_X$ inventories for all sources with all control measures in place as of the milestone year and including projected 15 percent milestone year growth in activity must be at or lower than the target levels of VOC and $NO_X$ emissions.

(3) Method 3 applies to Serious and higher classified areas for the 2008 ozone NAAQS or portions thereof that have met a 15 percent reduction requirement for a previous ozone NAAQS and that must meet an 18 percent VOC emission reduction requirement with $NO_X$ substitution allowed, following EPA's $NO_X$ Substitution Guidance [4]:

(A) Estimate the actual anthropogenic baseline year inventory for both VOC and $NO_X$ with all source control programs in place during the baseline year.

(B) Using the same highway vehicle activity inputs used to calculate the baseline year inventory, run the appropriate motor vehicle emissions model for the baseline year and the 18 percent milestone year (i.e., the sixth year following the baseline year) with all post-1990 CAA measures turned off. Any other local inputs for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of RVP regulations promulgated in June 1990.

(C) Calculate the difference between the baseline year and the 18 percent milestone year VOC emissions factors calculated in Step B and multiply this difference by the baseline year VMT. The result is the VOC emissions reduction that will occur between the baseline year and the milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable VOC reduction that will occur over this period. Calculate the difference between the baseline and milestone years $NO_X$ emissions factors calculated in Step B and multiply by the baseline year VMT. This result is the $NO_X$ emissions reduction that will occur between the baseline year and the milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable $NO_X$ reduction that will occur over this period.

(D) Subtract the non-creditable VOC reduction calculated in Step C from the actual anthropogenic baseline year VOC inventory estimated in Step A. Subtract the non-creditable $NO_X$ reduction calculated in Step C from the actual anthropogenic baseline year $NO_X$ inventory estimated in Step A. These adjusted VOC and $NO_X$ inventories are the basis for calculating the target level of emissions in the milestone year.

(E) The target for VOC and $NO_X$ emissions in the 18 percent milestone year needed to meet the 18 percent milestone year RFP requirement is any combination of VOC and $NO_X$ emissions that result in a combined total of 18 percent reductions when compared to the adjusted VOC and $NO_X$ inventories calculated in Step D. For example, the target level of VOC emissions in the 18 percent milestone year could be 92 percent of the adjusted VOC inventory in Step D (and 8 percent reduction in VOC) and 90 percent of the adjusted $NO_X$ inventory in Step D (a 10 percent reduction in $NO_X$). The actual projected 18 percent milestone year VOC and $NO_X$ inventories for all sources with all control measures in place in the milestone year and including projected 18 percent milestone year growth in activity must be at or lower than the target levels of VOC and $NO_X$ emissions.

(4) Method 4 applies to all Serious and higher classified areas that have used Method 1 (and therefore do not have a $NO_X$ target level of emissions for the 15 percent milestone year) and must meet an additional reduction VOC requirement of 9 percent every 3 years after the 15 percent milestone year with $NO_X$ substitution allowed, following EPA's $NO_X$ Substitution Guidance. Each subsequent target level of emissions should be calculated as an emission reduction from the previous target.

[3] $NO_X$ Substitution Guidance (December 15, 1993; available at *http://www.epa.gov/ttn/oarpg/t1pgm.html*).

[4] $NO_X$ Substitution Guidance (December 15, 1993; available at *http://www.epa.gov/ttn/oarpg/t1pgm.html*).

(A) Estimate the actual anthropogenic baseline year $NO_X$ inventory in the baseline year with all control programs in place in the baseline year.

(B) Using the same highway vehicle activity inputs used to calculate the actual baseline year inventory, run the appropriate emissions model for VOC and $NO_X$ in the baseline year and the 15 percent milestone year (previously done in Step B in Method 1 for VOC but not necessarily for $NO_X$) and the first 9 percent milestone year with all post-1990 CAA measures turned off. Any other local inputs for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June, 1990.

(C) Calculate the difference between the 15 percent milestone year and the first 9 percent milestone year VOC emission factors calculated in Step B and multiply by the baseline year VMT. The result is the VOC emissions reduction that will occur between the 15 percent milestone year and the 9 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable VOC reduction that will occur over this period. Calculate the difference between the baseline year and the first 9 percent milestone year $NO_X$ emission factors calculated in Step B and multiply by the baseline year VMT. The result is the $NO_X$ emissions reduction that will occur between the baseline year and the first 9 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable $NO_X$ reduction that will occur over this period.

(D) Subtract the non-creditable VOC reduction calculated in Step C from the 15 percent milestone year VOC target level of emissions calculated previously. Subtract the non-creditable $NO_X$ reduction calculated in Step C from the actual the baseline year $NO_X$ inventory of emissions calculated in Step A. These adjusted VOC and $NO_X$ inventories are the basis for calculating the target level of emissions for the first 9 percent milestone year.

(E) The target for VOC and $NO_X$ emissions in the 9 percent milestone year needed to meet the first 9 percent milestone year RFP requirement is any combination of VOC and $NO_X$ emissions that result in a combined total of 9 percent reductions when compared to the adjusted VOC and $NO_X$ inventories calculated in Step D that total 9 percent. For example, the target level of VOC emissions in the first 9 percent milestone year could be 96 percent of the adjusted VOC inventory in Step D (a 4 percent reduction in VOC emissions) and 95 percent of the adjusted $NO_X$ inventory in Step D (a 5 percent reduction in $NO_X$ emissions). The actual projected first 9 percent milestone year VOC and $NO_X$ inventories for all sources with all control measures in place in the milestone year and including projected first 9 percent milestone year growth in activity must be at or lower than the target levels of VOC and $NO_X$ emissions.

(F) For subsequent 3-year periods until the attainment date, the adjusted VOC inventory should be based on the difference in VOC emissions during that 3-year period when all post-1990 CAA measures are turned off, subtracted from the previous VOC target level of emissions. For subsequent 3-year periods, the adjusted $NO_X$ inventory should be based on the difference in $NO_X$ emissions during that 3-year period when all post-1990 CAA measures are turned off, subtracted from the previous $NO_X$ target level of emissions. For example, for the subsequent 9 percent milestone year, take the VOC and $NO_X$ emissions reductions that will occur between the 9 percent milestone year and the subsequent 9 percent milestone year without the benefits of any post-1990 CAA measures and with consistent vehicle activity. These reductions are subtracted from the 9 percent milestone year target level of VOC and $NO_X$ emissions calculated in Step E to get the adjusted VOC and $NO_X$ inventories to be used as the basis for calculating the target levels of VOC and $NO_X$ emissions in the subsequent 9 percent milestone year.

(5) Method 5 applies to all Moderate areas that are subsequently reclassified as Serious (or higher) pursuant to section 181(b) of the CAA, that used Method 2 (and therefore do have a $NO_X$ target level of emissions for the 15 percent milestone year) and that must meet an additional reduction VOC requirement of 9 percent every 3 years after the 15 percent milestone year with $NO_X$ substitution allowed, following EPA's $NO_X$ Substitution Guidance. Each subsequent target level of emissions should be calculated as an emissions reduction from the previous target.

(A) Using the same highway vehicle activity inputs used to calculate the actual baseline year inventory, run the appropriate emissions model for VOC and $NO_X$ in the 15 percent milestone year (previously done in Step B in Method 2) and the 9 percent milestone year with all post-1990 CAA measures turned off. Any other local inputs for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June 1990.

(B) Calculate the difference between the 15 percent milestone year and the 9 percent milestone year VOC emission factors calculated in Step A and multiply by the baseline year VMT. The result is the VOC emissions reduction that will occur between the 15 percent milestone year and the 9 percent milestone year without the benefits of any post-1990 CAA control measures. This is the non-creditable VOC reduction that will occur over this period. Calculate the difference between the baseline year and the first 9 percent milestone year $NO_X$ emission factors calculated in Step A and multiply by the baseline year VMT. The result is the $NO_X$ emissions reduction that will occur between the baseline year and the first 9 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable $NO_X$ reduction that will occur over this period.

(C) Subtract the non-creditable VOC reduction calculated in Step B from the 15 percent milestone year VOC target level of emissions calculated previously. Subtract the non-creditable $NO_X$ reduction calculated in Step B from the 15 percent milestone year $NO_X$ target level of emissions calculated previously. These adjusted VOC and $NO_X$ inventories are the basis for calculating the target level of emissions for the 9 percent milestone year.

(D) The target for VOC and $NO_X$ emissions in the 9 percent milestone year needed to meet the first 9 percent milestone year RFP requirement is any combination of VOC and $NO_X$ emissions that result in a combined total of 9 percent reductions when compared to the adjusted VOC and $NO_X$ inventories calculated in Step D For example, the target level of VOC emissions in the first 9 percent milestone year could be 96 percent of the adjusted VOC inventory in Step C (a 4 percent reduction in VOC emissions) and 95 percent of the adjusted $NO_X$ inventory in Step C (a 5 percent reduction in $NO_X$ emissions). The actual projected 9 percent milestone year VOC and $NO_X$ inventories for all sources with all control measures in place and including projected 9 percent milestone year growth in activity must be at or lower than the target levels of VOC and $NO_X$ emissions.

(E) For subsequent 3-year periods until the attainment date, the adjusted VOC inventory should be based on the difference in VOC emissions during that 3-year period when all post-1990 CAA measures are turned off using the same VMT used in the baseline year, subtracted from the previous VOC target level of emissions. For subsequent 3-year periods, the adjusted $NO_X$ inventory should be based on the difference in $NO_X$ emissions during that 3-year period when all post-1990 CAA measures are turned off using the same VMT used in the baseline year, subtracted from the previous $NO_X$ target level of emissions. For example, for the subsequent 9 percent milestone year, take the VOC and $NO_X$ emissions reductions that will occur between the 9 percent milestone year and the subsequent 9 percent milestone year without the benefits of any post-1990 CAA measures. These reductions are subtracted from the 9 percent milestone year target level of VOC and $NO_X$ emissions calculated in Step D to get the adjusted VOC and $NO_X$ inventories to be used as the basis for calculating the target levels of VOC and $NO_X$ emissions in the subsequent 9 percent milestone year.

(6) Method 6 applies to all Serious and higher classified areas that have used Method 3 (and therefore do have a $NO_X$ target level of emissions for the 18 percent milestone year) and must meet an additional reduction VOC requirement of 9 percent every 3 years after the 18 percent milestone year with $NO_X$ substitution allowed, following the EPA's $NO_X$ Substitution Guidance. Each subsequent target level of emissions should be calculated as an emissions reduction from the previous target.

(A) Using the same highway vehicle activity inputs used to calculate the actual baseline year inventory, run the appropriate emissions model for VOC and $NO_X$ in the 18 percent milestone year (previously done in Step B in Method 3) and the 9 percent milestone year with all post-1990 CAA measures turned off. Any other local inputs

for I/M programs should be set according to the program that was required to be in place in 1990. Fuel RVP should be set at 9.0 or 7.8 depending on the RVP required in the local area as a result of fuel RVP regulations promulgated in June 1990.

(B) Calculate the difference between the 18 percent milestone year and the 9 percent milestone year VOC emission factors calculated in Step A and multiply by the baseline year VMT. The result is the VOC emissions reduction that will occur between the 18 percent milestone year and the 9 percent milestone year without the benefits of any post-1990 CAA control measures. This is the non-creditable VOC reduction that will occur over this period. Calculate the difference between the baseline year and the first 9 percent milestone year $NO_X$ emission factors calculated in Step A and multiply by the baseline year VMT. The result is the $NO_X$ emissions reduction that will occur between the baseline year and the first 9 percent milestone year without the benefits of any post-1990 CAA measures. This is the non-creditable $NO_X$ reduction that will occur over this period.

(C) Subtract the non-creditable VOC reduction calculated in Step B from the 18 percent milestone year VOC target level of emissions calculated previously. Subtract the non-creditable $NO_X$ reduction calculated in Step B from the 18 percent milestone year $NO_X$ target level of emissions calculated previously. These adjusted VOC and $NO_X$ inventories are the basis for calculating the target level of emissions for 9 percent milestone year.

(D) The target for VOC and $NO_X$ emissions in the 9 percent milestone year needed to meet the first 9 percent milestone year RFP requirement is any combination of VOC and $NO_X$ emissions that result in a combined total of 9 percent reductions when compared to the adjusted VOC and $NO_X$ inventories calculated in Step D For example, the target level of VOC emissions in the first 9 percent milestone year could be 96 percent of the adjusted VOC inventory in Step C (a 4 percent reduction in VOC emissions) and 95 percent of the adjusted $NO_X$ inventory in Step C (a 5 percent reduction in $NO_X$ emissions). The actual projected 9 percent milestone year VOC and $NO_X$ inventories for all sources with all control measures in place and including projected 9 percent milestone year growth in activity must be at or lower than the target levels of VOC and $NO_X$ emissions.

(E) For subsequent 3-year periods until the attainment date, the adjusted VOC inventory should be based on the difference in VOC emissions during that 3-year period when all post-1990 CAA measures are turned off using the same VMT used in the baseline year, subtracted from the previous VOC target level of emissions. For subsequent 3-year periods, the adjusted $NO_X$ inventory should be based on the difference in $NO_X$ emissions during that 3-year period when all post-1990 CAA measures are turned off using the same VMT used in the baseline year, subtracted from the previous $NO_X$ target level of emissions. For example, for the subsequent 9 percent milestone year, take the difference in VOC and $NO_X$ emissions reductions that will occur between the 9 percent milestone year and the subsequent 9 percent milestone year without the benefits of any post-1990 CAA measures. These values are subtracted from the 9 percent milestone year target level of VOC and $NO_X$ emissions calculated in Step D to get the adjusted VOC and $NO_X$ inventories to be used as the basis for calculating the target levels of VOC and $NO_X$ emissions in the subsequent 9 percent milestone year.

## Appendix D to Preamble—List of Areas Nonattainment for the 2008 Ozone NAAQS In Addition to a Prior Ozone NAAQS

TABLE 1—AREAS NONATTAINMENT FOR BOTH THE 2008 AND 1997 OZONE NAAQS

| 2008 Nonattainment area name | 1997 8-hour ozone classification | 1997 Ozone attainment determination |
|---|---|---|
| Atlanta Area, GA * | Moderate | Attainment Deadline Determination ** Clean Data Determination. |
| Calaveras County, CA * | Moderate | Attainment Deadline Determination Clean Data Determination. |
| Charlotte-Rock Hill Area, NC, SC * | Moderate | Attainment Deadline Determination *** Clean Data Determination. |
| Chico Area, CA | Marginal | Attainment Deadline Determination Clean Data Determination. |
| Denver-Boulder-Greeley-Ft. Collins-Loveland Area, CO. | Marginal | |
| Imperial County Area, CA | Moderate | Clean Data Determination. |
| Jamestown Area, NY | Moderate | Clean Data Determination **** |
| Kern County (Eastern Kern) Area, CA | Moderate | Attainment Deadline Determination Clean Data Determination. |
| Mariposa County, CA * | Moderate | Attainment Deadline Determination Clean Data Determination. |
| Nevada County (Western part) Area, CA | Moderate | Attainment Deadline Determination Clean Data Determination. |
| Phoenix-Mesa Area, AZ * | Marginal | |
| Pittsburgh-Beaver Valley Area, PA | Moderate | Clean Data Determination **** |
| San Diego Area, CA | Moderate | ** |
| Sheboygan County, WI | Moderate | Attainment Deadline Determination ***** Clean Data Determination. |
| St. Louis-St. Charles-Farmington, MO-IL * | Moderate | Attainment Deadline Determination ****** Clean Data Determination. |

* 2008 nonattainment area boundary differs from 1997 nonattainment area boundary.

** The EPA published a proposed approval action for the state submitted redesignation request under CAA section 107(d)(3)(E) for the 1997 ozone NAAQS.

*** The EPA published a final approval action for the redesignation request submitted by the state of SC under CAA section 107(d)(3)(E) for the 1997 ozone NAAQS. The state of NC submitted a redesignation request under CAA § 107(d)(3)(E) for the 1997 ozone NAAQS.

**** Former subpart 1 areas with Determinations of Attainment prior to subpart 2 classification on May 14, 2012 (77 FR 28424). The EPA is considering approving an Attainment Deadline Determination for the Marginal or Moderate 1997 ozone NAAQS attainment date.

****** The state of WI submitted a redesignation request under CAA section 107(d)(3)(E) for the 1997 ozone NAAQS.

******* The EPA published a final approval action for the redesignation request submitted by the state of IL under CAA section 107(d)(3)(E) for the 1997 ozone NAAQS. The state of MO submitted a redesignation request under CAA section 107(d)(3)(E) for the 1997 ozone NAAQS.

TABLE 2—AREAS NONATTAINMENT FOR THE 2008, 1997, AND 1-HOUR OZONE NAAQS

| 2008 Nonattainment area name | 2008 8-Hour ozone classification | 1-Hour ozone classification | 1-Hour ozone attainment determination | 1997 8-Hour ozone classification | 1997 Ozone attainment determination |
|---|---|---|---|---|---|
| Baltimore Area, MD | Moderate | Severe 15 | Clean Data Determination. | Serious | |
| Dallas-Fort Worth Area, TX*. | Moderate | Serious | Clean Data Determination. | Serious | |
| Dukes County, MA* | Marginal | Serious | Clean Data Determination, Attainment Deadline Determination. | Moderate | Clean Data Determination, Attainment Deadline Determination. |
| Greater Connecticut Area, CT. | Marginal | Serious | Clean Data Determination. | Moderate | Clean Data Determination, Attainment Deadline Determination. |
| Houston-Galveston-Brazoria Area, TX. | Marginal | Severe 17 | | Severe 15 | |
| Los Angeles and San Bernardino Counties (W Mojave Desert) Area, CA. | Severe 15 | Severe 17 | | Severe | |
| Los Angeles-South Coast Air Basin Area, CA. | Extreme | Extreme | | Extreme | |
| Morongo Areas of Indian Country (Morongo Band of Mission Indians)**. | Moderate | Extreme | | Severe-17 | |
| New York-N. New Jersey-Long Island Area, NY, NJ, CT. | Marginal | Severe 17 | Clean Data Determination. | Moderate | Clean Data Determination, Attainment Deadline Determination. |
| Pechanga Areas of Indian Country (Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation)**. | Moderate | Extreme | | Severe-17 | |
| Philadelphia-Wilmington-Atlantic City Area, PA, NJ, MD, DE*. | Marginal | Severe 15 | Clean Data Determination, Attainment Deadline Determination. | Moderate | Clean Data Determination, Attainment Deadline Determination. |
| Riverside County (Coachella Valley) Area (1-hr Southeast Desert), CA. | Severe 15 | Severe 17 | | Severe 15 | |
| Sacramento Metro Area, CA. | Severe 15 | Severe 15 | Clean Data Determination. | Severe 15 | |
| San Francisco Bay Area, CA. | Marginal | Other | Clean Data Determination, Attainment Deadline Determination. | Marginal | |
| San Joaquin Valley Area, CA. | Extreme | Extreme | | Extreme | |
| Seaford, DE*** | Marginal | Marginal | Clean Data Determination, Attainment Deadline Determination. | Moderate | Clean Data Determination, Attainment Deadline Determination. |
| Ventura County (part) Area, CA. | Serious | Severe 15 | Clean Data Determination, Attainment Deadline Determination. | Serious | Clean Data Determination. |
| Washington Area, DC, MD, VA. | Marginal | Severe 15 | Clean Data Determination, Attainment Deadline Determination. | Moderate | Clean Data Determination, Attainment Deadline Determination. |

*2008 nonattainment area boundary differs from 1997 and 1-hr ozone nonattainment area boundary.
**Part of Los Angeles-South Coast Air Basin Area, CA (South Coast) for 1997 and 1-hr ozone nonattainment area boundaries. Classification for the 1997 ozone NAAQS was the classification based on the DV for a South Coast monitor near the tribal land.
***Part of the Philadelphia-Wilmington-Atlantic City Area, PA, NJ, MD, DE for 1997 ozone nonattainment area boundary, and part of the Sussex County, DE ozone nonattainment area boundary for the 1-hour ozone NAAQS.

**Statutory Authority**

The statutory authority for this action is provided by sections 109; 110; 172; 181 through 185B; 301(a)(1) and 501(2)(B) of the CAA, as amended (42 U.S.C. 7409; 42 U.S.C. 7410; 42 U.S.C. 7502; 42 U.S.C. 7511–7511f; 42 U.S.C. 7601(a)(1); 42 U.S.C. 7661(2)(B)). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

**List of Subjects**

*40 CFR Part 50*

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

*40 CFR Part 51*

Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

*40 CFR Part 70*

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Operating permits, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

*40 CFR Part 71*

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Operating permits, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 29, 2013.

**Bob Perciasepe,**

*Acting Administrator.*

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 50—NATIONAL PRIMARY AND SECONDARY AXVYGH9

■ 1. The authority citation for part 50 continues to read as follows:

**Authority:** 42 U.S.C. 7401, et seq.

■ 2. Section 50.10 is amended by revising paragraph (c) to read as follows:

### § 50.10 National 8-hour primary and secondary ambient air quality standards for ozone.

* * * * *

(c) Until date of publication of the final SIP Requirements Rule in the **Federal Register**, the 1997 ozone NAAQS set forth in this section will continue in effect, notwithstanding the promulgation of the 2008 ozone NAAQS under § 50.15. The 1997 ozone NAAQS set forth in this section will no longer apply to an area upon the date of publication of the final SIP Requirements Rule in the **Federal Register**. Area designations and classifications with respect to the 1997 ozone NAAQS are codified in CFR part 81.

## PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 3. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

### Subpart X—Provisions for Implementation of 8-Hour Ozone National Ambient Air Quality Standard

■ 4. Section 51.919 is added to read as follows:

#### § 51.919 Applicability

As of one year after the effective date of designations for the 2008 ozone NAAQS, as set forth in 50.10(c), the provisions of Subpart AA shall replace the provisions of Subpart X, 51.900 to 51.918, which cease to apply.

### Subpart AA—Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards

■ 5. Amend part 51, subpart AA by:
■ a. Revising § 51.1100 by adding paragraphs (o) through (aa): and
■ b. Adding §§ 51.1104 through 51.1119.

The revisions and additions read as follows

#### Subpart AA—Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards

Sec.

51.1100 Definitions.
51.1101 Applicability of part 51.
51.1102 Classification and nonattainment area planning provisions.
51.1103 Application of classification and attainment date provisions in CAA section 181 of subpart 2 to areas subject to § 51.1102(a).
51.1104 [Reserved].
51.1105 Transition from the 1997 and 1-hour NAAQS to the 2008 ozone NAAQS and anti-backsliding.
51.1106 Redesignation to nonattainment following initial designations.
51.1107 Applicability of CAA section 181(a)(5)(B) for an area that fails to attain the 2008 ozone NAAQS by its attainment date.
51.1108 Modeling and attainment demonstration requirements.
51.1109 [Reserved].
51.1110 Requirements for reasonable further progress (RFP).
51.1111 [Reserved].
51.1112 Requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM).
51.1113 Section 182(f) $NO_X$ exemption provisions.
51.1114 New source review requirements.
51.1115 Emissions inventory requirements.
51.1116 Requirements for an Ozone Transport Region.
51.1117 Fee programs for Severe and Extreme nonattainment areas that fail to attain.
51.1118 Suspension of attainment SIP planning requirements in a nonattainment area upon a determination that the area has attained the ozone NAAQS.
51.1119 Applicability.
Appendixes A–K to Part 51 [Reserved]
Appendix L to Part 51—Example Regulations for Prevention of Air Pollution Emergency Episodes
Appendix M to Part 51—Recommended Test Methods for State Implementation Plans
Appendixes N–O to Part 51 [Reserved]
Appendix P to Part 51—Minimum Emission Monitoring Requirements
Appendixes Q–R to Part 51 [Reserved]
Appendix S to Part 51—Emission Offset Interpretative Ruling
Appendixes T–U to Part 51 [Reserved]
Appendix V to Part 51—Criteria for Determining the Completeness of Plan Submissions
Appendix W to Part 51—Guideline on Air Quality Models
Appendix X to Part 51—Examples of Economic Incentive Programs
Appendix Y to Part 51—Guidelines for BART Determinations Under the Regional Haze Rule

### Subpart AA—Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards.

#### § 51.1100 Definitions.

* * * * *

(o) Applicable requirements for an area means the following requirements, to the extent such requirements apply to the area pursuant to its classification under CAA section 181(a)(1) for the 1-hour NAAQS or the 1997 ozone NAAQS at the time of revocation of the 1997 ozone NAAQS:

(1) Reasonably available control technology (RACT).

(2) Vehicle inspection and maintenance programs (I/M) under CAA section 182(b)(4) and 182(c)(3).

(3) Major source applicability cut offs for purposes of RACT.

(4) Reductions to achieve Reasonable Further Progress (RFP).

(5) Clean fuels fleet program under CAA section 183(c)(4).

(6) Clean fuels for boilers under CAA section 182(e)(3).

(7) Transportation Control Measures (TCMs) during heavy traffic hours as specified under CAA section 182(e)(4).

(8) Enhanced (ambient) monitoring under CAA section 182(c)(1).

(9) Transportation controls under CAA section 182(c)(5).

(10) Vehicle miles traveled provisions of CAA section 182(d)(1).

(11) $NO_X$ requirements under CAA section 182(f).

(12) Attainment demonstration.

(13) Nonattainment contingency measures required under CAA sections 172(c)(9) and 182(c)(9) for failure to attain the 1-hour or 1997 ozone NAAQS by the applicable attainment date or to make reasonable further progress toward attainment of the 1-hour or 1997 ozone NAAQS.

(14) Nonattainment New Source Review (NSR) requirements.

(15) Penalty fee program requirements for Severe and Extreme Areas under CAA section 185.

(p) CAIR means the Clean Air Interstate Rule codified at 40 CFR 51.123(a) through (ee).

(q) $NO_X$ SIP Call means the rules codified at 40 CFR 51.121 and 51.122.

(r) Ozone transport region means the area established by CAA section 184(a) or any other area established by the Administrator pursuant to CAA section 176A for purposes of ozone.

(s) Reasonable further progress (RFP) means for the purposes of the 2008 ozone NAAQS, the progress reductions required under CAA section 172(c)(2) and CAA sections 182(b)(1) and (c)(2)(B) and (c)(2)(C).

(t) Rate of progress (ROP) means for the purposes of the 1-hour ozone NAAQS, the progress reductions required under CAA section 172(c)(2) and CAA sections 182(b)(1) and (c)(2)(B) and (c)(2)(C).

(u) Revocation of the 1-hour NAAQS means the time at which the 1-hour NAAQS no longer apply to an area pursuant to 40 CFR 50.9(b).

(v) Revocation of the 1997 ozone NAAQS means the time at which the 1997 8-hour NAAQS no longer apply to an area pursuant to 40 CFR 50.10(c).

(w) Subpart 1 means subpart 1 of part D of title I of the CAA.

(x) Subpart 2 means subpart 2 of part D of title I of the CAA.

(y) [Reserved]

(z) Consolidated submittal means a joint submittal of the emissions inventory, RACT, and attainment demonstration SIPs no later than 30 months after the effective date of designation.

(aa) An area ''designated nonattainment for the 1-hour ozone NAAQS'' means, for purposes of section 51.1105, an area that is subject to applicable 1-hour ozone NAAQS anti-backsliding requirements at the time of revocation of the 1997 ozone NAAQS.

* * * * *

**§ 51.1104 [Reserved]**

**§ 51.1105 Transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS and anti-backsliding.**

(a) Requirements that continue to apply after revocation of the 1997 ozone NAAQS.

(1) 2008 ozone NAAQS nonattainment and 1997 ozone NAAQS nonattainment.

The following requirements apply to an area designated nonattainment for the 2008 ozone NAAQS and also designated nonattainment for the 1997 ozone NAAQS, or nonattainment for both the 1997 and 1-hour ozone NAAQS, at the time of revocation of the 1997 ozone NAAQS:

(i) The area remains subject to the obligation to adopt and implement the applicable requirements as defined in § 51.1100(o), for any NAAQS for which it was designated nonattainment at the time of revocation, in accordance with its classification for that NAAQS at the time of that revocation; except as provided in paragraph (b) of this section.

(2) 2008 ozone NAAQS nonattainment and 1997 ozone NAAQS maintenance.

For an area designated nonattainment for the 2008 ozone NAAQS that was redesignated to attainment prior to the date of revocation (hereinafter a ''maintenance area'') for the 1997 ozone NAAQS at the time of revocation of that NAAQS, the approved SIP, including the maintenance plan, satisfies the applicable requirements defined in section 51.1100(o) for the revoked NAAQS. These applicable requirements shall be implemented in accordance with the measures included in the area's SIP, including the maintenance plan. Any applicable requirements that were shifted to contingency measures prior to revocation of the 1997 ozone NAAQS may remain in that form.

(3) 2008 ozone NAAQS attainment and 1997 ozone NAAQS nonattainment.

(i) Obligations in an approved SIP.

An area that is designated attainment for the 2008 ozone NAAQS, and designated nonattainment for the 1997 ozone NAAQS or for both the 1997 and the 1-hour ozone NAAQS is no longer subject to nonattainment NSR as of revocation of the 1997 ozone NAAQS: the state may at any time request that the nonattainment NSR provisions applicable to the area be removed from the SIP as of that date. The state may also request, consistent with CAA section 110(l) and 193, that SIP measures adopted to satisfy other applicable requirements of § 51.1100(o) be shifted to maintenance contingency measures.

[OPTION 1] (ii) Termination of previous obligations for areas initially designated attainment for the 2008 ozone NAAQS.

For areas initially designated attainment for the 2008 ozone NAAQS, and designated nonattainment for the 1997 or for both the 1997 and 1-hour ozone NAAQS at the time of revocation of the 1997 ozone NAAQS, an area's approved PSD SIP shall satisfy the state's obligations with respect to the area's maintenance of the 2008 ozone NAAQS pursuant to CAA section 110(a)(1).

[OPTION 2] (ii) Maintenance showing for the 2008 ozone NAAQS.

For areas initially designated attainment for the 2008 ozone NAAQS, and designated nonattainment for the 1997 or for both the 1997 and 1-hour ozone NAAQS at the time of revocation of the 1997 ozone NAAQS, the state shall provide a showing of maintenance for the 2008 ozone NAAQS, which shall be due no later than three years after the effective date of designations for the 2008 ozone NAAQS. This maintenance showing shall demonstrate that the area can continue to maintain the 2008 ozone NAAQS for 10 years following the designations for that NAAQS.

(4) 2008 ozone NAAQS attainment and 1997 ozone NAAQS maintenance.

(i) Obligations in an approved SIP.

An area that is designated attainment of the 2008 ozone NAAQS and which has been redesignated to attainment for the 1997 ozone NAAQS with an approved section 175A maintenance plan, satisfies the applicable requirements set forth in section 51.1100(o) through implementation of the provisions of its SIP and maintenance plan. After revocation of the 1997 ozone NAAQS, and to the extent consistent with sections 110(l) and 193, the state may request that obligations under the applicable requirements of section 51.1100(o) be shifted to its list of maintenance plan contingency measures.

(ii) No additional obligation for the 2008 ozone NAAQS.

For an area that is initially designated attainment for the 2008 ozone NAAQS and which has been redesignated to attainment for the 1997 ozone NAAQS with an approved section 175A maintenance plan, the area's approved section 175A plan shall satisfy the state's obligations under CAA section 110(a)(1) with respect to maintenance of the 2008 ozone NAAQS.

(b) For how long does an area designated nonattainment for the 2008 ozone NAAQS remain subject to the applicable requirements as provided under paragraph (a)?

(1) Redesignation for 2008 ozone NAAQS or approval of a redesignation substitute for a revoked ozone NAAQS.

A state remains subject to the obligations for a revoked NAAQS under paragraphs (a)(1) and (a)(2) of this section until either (1) EPA approves the area's redesignation to attainment for the 2008 ozone NAAQS; or (2) EPA approves a showing for the area in a procedure that succeeds the redesignation process for a revoked NAAQS, and which serves the same purpose of ending anti-backsliding requirements as would redesignation, were the NAAQS in effect. Under this redesignation substitute procedure for a revoked NAAQS, and for this limited anti-backsliding purpose, the area must show that it has attained that revoked NAAQS due to permanent and enforceable emission reductions, and it must demonstrate that it will maintain that NAAQS for ten years from the date of EPA's approval of this showing. If EPA, after notice-and-comment rulemaking, approves this showing, it will have the effect set forth in paragraph (b)(2) below.

(2) Effect of redesignation to attainment for the 2008 ozone NAAQS or approval of a redesignation substitute for a revoked ozone NAAQS. After redesignation to attainment for the 2008 ozone NAAQS, the state may request that provisions for nonattainment NSR be removed from the SIP, and that other anti-backsliding obligations be shifted to contingency measures provided that such action is consistent with CAA sections 110(l) and 193. After approval of a redesignation substitute for a revoked NAAQS, the state may request to remove from the SIP provisions for nonattainment NSR for that revoked NAAQS. The State may also request to shift other anti-backsliding obligations for the relevant revoked standard to contingency measures provided that such action is consistent with CAA sections 110(l) and 193.

(c) Portions of an area designated nonattainment or attainment for the 2008 ozone NAAQS that remain subject to the obligations identified in paragraph (a) of this section.

Only that portion of the designated nonattainment or attainment area for the 2008 ozone NAAQS that was required to adopt the applicable requirements in § 51.1100(o) for purposes of the 1-hour or 1997 ozone NAAQS is subject to the obligations identified in paragraph (a) of this section. 40 CFR part 81, subpart C identifies the areas designated nonattainment and associated area boundaries for the 1997 ozone NAAQS. Areas that are designated nonattainment for the 1997 ozone NAAQS at the time of designation for the 2008 ozone NAAQS may be redesignated to attainment prior to the effective date of revocation of that ozone NAAQS.

(d) Obligations under the 1997 ozone NAAQS that no longer apply after revocation of the 1997 ozone NAAQS.

(1) Maintenance plans.

Upon revocation of the 1997 ozone NAAQS, an area with an approved 1997 ozone NAAQS maintenance plan under CAA section 175A may modify the maintenance plan: (a) To remove the obligation to submit a maintenance plan for the 1997 ozone NAAQS 8 years after approval of the initial 1997 ozone NAAQS maintenance plan; and (b) to remove the obligation to implement contingency measures upon a violation of the 1997 ozone NAAQS. However, such requirements will remain enforceable as part of the approved SIP until such time as EPA approves a SIP revision removing such obligations.

(2) Determinations of failure to attain the 1997 and/or 1-hour NAAQS.

(i) After revocation of the 1997 ozone NAAQS, EPA is no longer obligated to determine pursuant to CAA section 181(b)(2) or section 179(c) whether an area designated Marginal, Moderate, or Serious attained the 1997 ozone NAAQS by that area's attainment date for the 1997 ozone NAAQS.

(ii) Upon revocation of the 1997 ozone NAAQS for an area, under no circumstances is EPA obligated to reclassify an area to a higher classification for the 1997 ozone NAAQS based upon a determination that the area failed to attain the 1997 ozone NAAQS by the area's attainment date for the 1997 ozone NAAQS.

(iii) For the revoked 1-hour and 1997 ozone NAAQS, EPA is required to determine whether a nonattainment area attained the 1-hour or 1997 ozone NAAQS by the area's attainment date solely for the purpose of addressing an applicable requirement for nonattainment contingency measures or section 185 fee programs. In making such a determination, the EPA may consider and apply the provisions of former section 51.907 in interpreting whether a 1-year extension of the attainment date is applicable under section 172(a)(2)(C) or 181(a)(5) of the CAA.

(e) What is the continued applicability of the FIP and SIP requirements pertaining to CAA section 110(a)(2)(D)(i) and (ii) after revocation of the 1997 ozone NAAQS?

All control requirements associated with a FIP or approved SIP in effect for an area at the time the 1997 ozone NAAQS is revoked, such as the $NO_X$ SIP Call or the CAIR shall continue to apply after revocation of the 1997 ozone NAAQS. Control requirements approved into the SIP pursuant to obligations arising from section 110(a)(2)(D)(i) and (ii), including 40 CFR 51.121, 51.122 and 51.123, may be modified by the state only if the requirements of §§ 51.121, 51.122 and 51.123, including statewide $NO_X$ emission budgets continue to be in effect. Any such modification must meet the requirements of CAA section 110(l).

(f) New source review.

An area designated nonattainment for the 2008 ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS at the time of revocation of the 1997 ozone NAAQS remains subject to the obligation to adopt and implement the requirements for nonattainment NSR that apply or applied to the area pursuant to CAA sections 172(c)(5), 173 and 182 based on the highest of: (i) The area's classification under CAA section 181(a)(1) for the 1-hour NAAQS as of the effective date of revocation of the 1-hour ozone NAAQS; (ii) the area's classification under 40 CFR 51.903 for the 1997 ozone NAAQS as of the date a permit is issued or as of the effective date of revocation of the 1997 ozone NAAQS, whichever is earlier; and (iii) the area's classification under 40 CFR 51.1103 for the 2008 ozone NAAQS. Upon removal of nonattainment NSR obligations for a revoked NAAQS under section 51.1105(b)(ii), the state remains subject to the obligation to adopt and implement the requirements for nonattainment NSR that apply or applied to the area for the remaining applicable NAAQS consistent with this paragraph.

**§ 51.1106 Redesignation to nonattainment following initial designations.**

For any area that is initially designated attainment for the 2008 ozone NAAQS and that is subsequently redesignated to nonattainment for the 2008 ozone NAAQS, any absolute, fixed date applicable in connection with the requirements of this part other than an attainment date is extended by a period of time equal to the length of time between the effective date of the initial designation for the 2008 ozone NAAQS and the effective date of redesignation, except as otherwise provided in this subpart. The number of years such an area would have to attain would be based on the area's classification, consistent with Table 1 in section 51.1103.

**§ 51.1107 Applicability of CAA section 181(a)(5)(B) for an area that fails to attain the 2008 ozone NAAQS by its attainment date.**

(a) A nonattainment area will meet the requirement of CAA section 181(a)(5)(B) pertaining to 1-year extensions of the attainment date if:

(1) For the first 1-year extension, the area's 4th highest daily 8 hour average in the attainment year is 0.075 ppm or less.

(2) for the second 1-year extension, the area's 4th highest daily 8 hour value, averaged over both the original attainment year and the first extension year, is 0.075 ppm or less.

(b) For purposes of paragraph (a) of this section, the area's 4th highest daily 8 hour average for a year shall be from the monitor with the highest 4th highest daily 8 hour average for that year of all the monitors that represent that area.

**§ 51.1108 Modeling and attainment demonstration requirements.**

(a) Attainment demonstration requirements for nonattainment areas classified as Moderate or higher pursuant to § 51.1103.

(1) An area classified as Moderate under § 51.1103(a) shall be subject to the attainment demonstration requirement applicable for that classification under CAA section 182, except such demonstration is due no later than [option 1: 36 months] [option 2: The state's choice of either 36 months or 30 months for a consolidated submission] after the effective date of the area's designation for the 2008 ozone NAAQS.

(2) An area classified as Serious or higher under § 51.1103(a) shall be subject to the attainment demonstration requirement applicable for that classification under CAA section 182, except such demonstration is due no later than [option 1: 48 months] [option 2: The state's choice of either 48 months or 30 months for a consolidated submission] after the effective date of the area's designation for the 2008 ozone NAAQS.

(b) Attainment demonstration criteria.

An attainment demonstration due pursuant to paragraph (a) of this section must meet the requirements of § 51.112; the adequacy of an attainment demonstration shall be demonstrated by means of a photochemical grid model or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(c) Implementation of control measures.

For each nonattainment area, the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season.

**§ 51.1109 [Reserved]**

**§ 51.1110 Requirements for reasonable further progress (RFP).**

(a) RFP for nonattainment areas classified pursuant to § 51.1103.

The RFP requirements specified in CAA section 182 for that area's classification shall apply.

(1) Submission deadline. For each area classified as Moderate or higher pursuant to § 51.1103, the state shall submit a SIP revision no later than [option 1: 36 months] [option 2: The state's choice of either 36 months or 30 months for a consolidated submittal] after designation as nonattainment for the 2008 ozone NAAQS that provides for RFP as described in paragraphs (a)(2)–(4) of this section.

(2) RFP requirements for areas classified as Moderate or higher with an approved 1-hour or 1997 ozone NAAQS 15 percent VOC RFP plan or a Determination of Attainment for those NAAQS.

An area classified as Moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour or 1997 ozone NAAQS or which has been determined to be attaining those NAAQS is considered to have met the requirements of CAA section 182(b)(1) for the 2008 ozone NAAQS and instead:

(i) If classified as Moderate or higher, the area is subject to the RFP requirements under CAA section 172(c)(2) and shall submit a SIP revision that:

(A) Provides for a 15 percent emission reduction from the baseline year within 6 years after the baseline year;

(B) provides for an additional 3 percent per year reduction from the end of the first 6 years up to the beginning of the attainment year if a baseline year earlier than 2011 is used; and

(C) relies on either $NO_X$ or VOC emissions reductions (or a combination) to meet the requirements of (a)(2)(i)(A) and (B). Use of $NO_X$ emissions reductions must meet the criteria in CAA section 182(c)(2)(C).

(ii) If classified as Serious or higher, the area is also subject to RFP under CAA section 182(c)(2)(B) and shall submit an RFP SIP no later than [option 1: 48 months] [option 2: The state's choice of either 48 months or 30 months for a consolidated submission] providing for an average of 3 percent per year of reduction for:

(A) All remaining 3-year periods after the first 6-year period until the area's attainment year; and that

(B) relies on either $NO_X$ or VOC emissions reductions (or a combination) to meet the requirements of (a)(2)(ii)(A) and (B). Use of $NO_X$ emissions reductions must meet the criteria in CAA section 182(c)(2)(C).

(3) RFP requirements for Moderate and above areas for which only a portion has an approved 15 percent VOC RFP plan for the 1-hour or 1997 ozone NAAQS.

An area classified as Moderate or higher that contains one or more areas, or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour or 1997 ozone NAAQS as well as areas for which EPA has not fully approved a 15 percent plan for either the 1-hour or 1997 ozone NAAQS shall meet the requirements of either paragraph (a)(3)(i) or (ii) below.

(i) The state shall not distinguish between the portion of the area that previously met the 15 percent VOC reduction requirement and the portion of the area that did not, and shall meet the requirements of (a)(4) of this section for the entire nonattainment area.

(ii) The state shall treat the area as two parts, each with a separate RFP target as follows:

(A) For the portion of the area without an approved 15 percent VOC RFP plan for the 1-hour or 1997 ozone NAAQS, the state shall submit a SIP revision as required under paragraph (a)(4) of this section. Emissions reductions to meet this requirement may come from anywhere within the 2008 ozone NAAQS nonattainment area.

(B) For the portion of the area with an approved 15 percent VOC plan for the 1-hour or 1997 ozone NAAQS, the state shall submit a SIP as required under paragraph (a)(2) of this section.

(4) RFP Requirements for areas without an approved 1-hour or 1997 ozone NAAQS 15 percent VOC RFP plan and without a determination of attainment that suspends the requirements for those NAAQS.

(i) For each area classified as Moderate or higher, the state shall submit a SIP revision consistent with CAA section 182(b)(1). The 6-year period referenced in CAA section 182(b)(1) shall begin January 1 of the year following the year used for the baseline emissions inventory.

(ii) For Moderate areas, the plan must provide for an additional 3 percent per year reduction from the end of the first 6 years up to the beginning of the attainment year if a baseline year earlier than 2011 is used.

(iii) For each area classified as Serious or higher, the state shall submit a SIP revision consistent with CAA section 182(c)(2)(B). The final increment of progress must be achieved no later than the attainment date for the area.

(5) Creditability of emission control measures for RFP plans.

Except as specifically provided in CAA section 182(b)(1)(C) and (D), section 182(c)(2)(B), and 51.1110(e) below, all emission reductions from SIP-approved or federally promulgated measures that occur after the baseline emissions inventory year are creditable for purposes of the RFP requirements in this section, provided the reductions meet the requirements for creditability, including the need to be enforceable, permanent, quantifiable, and surplus.

(a) Baseline emissions inventory for RFP plans.

For the RFP plans required under this section, at the time of designation for the 2008 ozone NAAQS the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of this part. States may use an alternative baseline emissions inventory provided the state demonstrates why it is appropriate to use the alternative baseline year. All states associated with a multi-state nonattainment area must consult and agree on a single alternative baseline year.

(b) $NO_X$ Substitution.

[Alternative 1 for the final rule] For areas classified as Moderate or higher that are subject to the requirements of CAA section 182(b)(1), the state must submit an RFP plan for the area that reduces VOC by 15 percent.

[Alternative 2 for the final rule] For areas classified as Moderate or higher that are subject to the requirements of CAA section 182(b)(1), the state may submit an RFP plan for the area that substitutes $NO_X$ reductions for VOC, consistent with section 182(c)(2)(C), provided that the state can demonstrate that the area achieved a 15 percent reduction in VOC emissions in the 6-year period from a baseline emission year of 1990.

[Alternative 3 for the final rule] For areas in the OTR that are subject to the requirements of CAA section 182(b)(1) for the first time, the state may submit an RFP plan for an area that substitutes $NO_X$ reductions for VOC, consistent with CAA section 182(c)(2)(C), provided that the state can demonstrate that the area achieved a 15 percent reduction in VOC emissions in the 6-year period from a baseline emission year of 1990.

(c) Creditability of out-of-area emissions reductions. For each area classified as Moderate or higher pursuant to § 51.1103, in addition to the restrictions on the creditability of emission control measures listed in 51.1110(a)(5), creditable emission reductions for percentage reduction RFP also must be obtained from sources within the nonattainment area.

(d) Calculation of non-creditable emissions reductions.

[Alternative 1 for the final rule] The following four categories of control measures listed in CAA section 182(b)(1)(D) are no longer required to be calculated for exclusion in RFP analyses because the Administrator has determined that due to the passage of time the effect of these exclusions would be de minimis: (i) Measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; (ii) regulations concerning Reid vapor pressure promulgated by November 15, 1990; (iii) measures to correct previous RACT requirements; and (iv) measures required to correct I/M programs.

[Alternative 2 for the final rule] The non-creditable emissions reductions for RFP targets must be calculated using the methodology in Appendix C of the preamble to the 2008 SIP Requirements Rule.

**§ 51.1111 [Reserved]**

**§ 51.1112 Requirements for reasonably available control technology (RACT) and reasonably available control measures (RACM).**

(a) RACT requirement for areas classified pursuant to § 51.1103.

(1) For each primary standard nonattainment area classified Moderate or higher, the state shall submit a SIP revision that meets the $NO_X$ and VOC RACT requirements in CAA sections 182(b)(2) and 182(f).

(2) The state shall submit the RACT SIP for each area no later than [option 1: 24 months] [option 2: State's choice of either 24 months or 30 months for a consolidated submittal] after the effective date of designation for the 2008 ozone NAAQS.

(3) The state shall provide for implementation of RACT as expeditiously as practicable but no later than January 1 of the fifth year after the effective date of designation for the 2008 ozone NAAQS.

(b) Determination of major stationary sources for applicability of RACT provisions.

VOCs and $NO_X$ are to be considered separately for purposes of determining whether a source is a major stationary source as defined in CAA section 302.

(c) Reasonably Available Control Measures (RACM) requirement for areas designated nonattainment for the 2008 ozone NAAQS.

For each nonattainment area required to submit an attainment demonstration under § 51.1108(a) and (b), the state shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.

**§ 51.1113 Section 182(f) $NO_X$ exemption provisions.**

(a) A person or a state may petition the Administrator for an exemption from $NO_X$ obligations under section 182(f) for any area designated nonattainment for the 2008 ozone NAAQS and for any area in a section 184 ozone transport region.

(b) The petition must contain adequate documentation that the criteria in section 182(f) are met.

(c) A section 182(f) $NO_X$ exemption granted for the 1-hour or 1997 ozone NAAQS does not relieve the area from any $NO_X$ obligations under section 182(f) for the 2008 ozone standard.

**§ 51.1114 New source review requirements.**

The requirements for NSR for the ozone NAAQS are located in § 51.165 of this part.

**§ 51.1115 Emissions inventory requirements.**

For each nonattainment area classified in accordance with § 51.1103, the emissions inventory requirements in CAA sections 182(a)(1) and 182(a)(3) shall apply, and such SIP shall be due no later [option 1: 24 months] [option 2: 24 months or state's choice of 30 months for a consolidated submittal] after designation. For purposes of defining the data elements for the emissions inventories for these areas, the ozone-relevant data element requirements under 40 CFR part 51 subpart A shall apply.

**§ 51.1116 Requirements for an Ozone Transport Region.**

(a) In general.

CAA sections 176A and 184 apply for purposes of the 2008 ozone NAAQS.

(b) RACT requirements for certain portions of an Ozone Transport Region.

(1) The state shall submit a SIP revision that meets the RACT requirements of CAA section 184(b)(2) for each area that is located in an ozone transport region.

(2) The state is required to submit the RACT revision no later than [option 1:

24 months] [option 2: State's choice of 24 months or 30 months for a consolidated submittal] after designation for the 2008 ozone NAAQS and shall provide for implementation of RACT as expeditiously as practicable but no later than January 1 of the fifth year after designation for the 2008 ozone NAAQS.

**§ 51.1117 Fee programs for Severe and Extreme nonattainment areas that fail to attain.**

For each area classified as Severe or Extreme for the 2008 ozone NAAQS, the state shall submit a SIP revision within 10 years of the effective date of designation that meets the requirements of CAA section 185.

**§ 51.1118 Suspension of attainment SIP planning requirements in a nonattainment area upon a determination that the area has attained the ozone NAAQS.**

Upon a determination by EPA that an area designated nonattainment for the 2008 ozone NAAQS, or for any prior ozone NAAQS, has attained the standard, the requirements for such area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures for failure to attain or make reasonable progress and other planning SIPs related to attainment of the 2008 ozone NAAQS, or for any prior NAAQS for which the determination has been made, shall be suspended until such time as: the area is redesignated to attainment for that NAAQS, at which time the requirements no longer apply; or EPA determines that the area has violated that NAAQS, at which time the area is again required to submit such plans.

**§ 51.1119 Applicability.**

As of revocation of the 1997 ozone NAAQS, as set forth in 50.10(c), the provisions of Subpart AA shall replace the provisions of Subpart X, 51.900 to 51.918, which cease to apply. See Subpart X section 51.919.

■ 6. Appendix S to Part 51 is amended by adding section VII. to read as follows:

## Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

**VII. Anti-Backsliding Measures**

Nonattainment area new source review obligations for prior ozone NAAQS.

(a) Except as provided in paragraph (b) of this section, an area designated nonattainment for the 2008 ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS at the time of revocation of the 1997 ozone NAAQS remains subject to the obligation to adopt and implement the requirements for nonattainment new source review that apply or applied to the area pursuant to CAA sections 172(c)(5), 173 and 182 based on the highest of: (i) The area's classification under CAA section 181(a)(1) for the 1-hour ozone NAAQS as of the effective date of revocation of that NAAQS; (ii) the area's classification under 40 CFR § 51.903 for the 1997 ozone NAAQS as of the date a permit is issued or as of the effective date of revocation of that NAAQS, whichever is earlier; and (iii) the area's classification under 40 CFR § 51.1103 for the 2008 ozone NAAQS.

(b)(i) An area remains subject to the obligations for a revoked NAAQS under paragraph (a) until either (1) the area is redesignated to attainment for the 2008 ozone NAAQS; or (2) EPA, after notice-and-comment rulemaking, approves a showing for the area in a procedure that succeeds the redesignation process for a revoked NAAQS, and which serves the same purpose of ending anti-backsliding requirements as would redesignation, were the NAAQS in effect. Under this redesignation substitute procedure for a revoked NAAQS, and for this limited anti-backsliding purpose, the area must show that it has attained that revoked NAAQS due to permanent and enforceable emission reductions, and it must demonstrate that it will maintain that NAAQS for ten years from the date of EPA's approval of this showing.

(ii) Effect of redesignation to attainment for 2008 ozone NAAQS or approval of a redesignation substitute for a revoked ozone NAAQS. After redesignation to attainment for the 2008 ozone NAAQS, the state may request that provisions for nonattainment NSR be removed from the SIP. After EPA approval of a redesignation substitute for a revoked NAAQS, the state may request that provisions for nonattainment NSR for the revoked NAAQS be removed from the SIP. Upon removal of nonattainment new source review obligations for a revoked NAAQS, the state remains subject to the obligation to adopt and implement the requirements for nonattainment new source review that apply or applied to the area for the remaining applicable NAAQS consistent with paragraph (a).

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Part III

## The President

Proclamation 8992—African-American Music Appreciation Month, 2013

Federal Register
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Thursday, June 6, 2013

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 8992 of May 31, 2013**

## African-American Music Appreciation Month, 2013

**By the President of the United States of America**

**A Proclamation**

Since our Nation's founding, people from every walk of life have set out to capture the American experience not just in poetry or prose, but also in the timeless quality of song. When the outcome of a revolution hung in the balance, drums and fifes filled brave patriots with the strength to carry on. When slavery kept millions in bondage, spirituals gave voice to a dream of true and lasting freedom. Through every generation, music has reflected and renewed our national conversation, bringing us together and reminding us of the humanity we share.

African Americans have always had a hand in shaping the American sound. From gospel and Motown to bebop and blues, their story is bound up in the music they made—songs of hurt and hardship, yearning and hope, and struggle for a better day. Those feelings speak to something common in all of us. With passion and creativity, African-American performers have done more than reinvent the musical styles they helped define; they have channeled their music into making change and advancing justice, from radio booths to the stage to our city streets.

That story is still unfolding today. We see it in the young poet putting his words to a beat; the conservatory student perfecting her technique; the jazz musician making old melodies new again. During African-American Music Appreciation Month, let us celebrate these artists and the generations who inspired them, and let us reflect on our heritage as a Nation forever enriched by the power of song.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2013 as African-American Music Appreciation Month. I call upon public officials, educators, and all the people of the United States to observe this month with appropriate activities and programs that raise awareness and foster appreciation of music that is composed, arranged, or performed by African Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

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